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(IJLGC)**[www.ijlgc.com](http://www.ijlgc.com)**SARAWAK MULTIMEDIA AUTHORITY: CURRENT  
FUNCTIONS AND POWERS AND THE WAY FORWARD**Tan Yew Tze<sup>1\*</sup>, Safinaz Mohd Hussein<sup>2</sup><sup>1</sup> Faculty of Law, Universiti Kebangsaan Malaysia  
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This work is licensed under [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)**Abstract:**

This article seeks to outline the establishment of the Sarawak Multimedia Authority (hereinafter referred to as "SMA") and critically examine the extent of its limited effectiveness in serving as a supposed regulatory body over communications and multimedia matters in the region of Sarawak as compared to its counterpart, Malaysian Communications and Multimedia Commission (hereinafter referred to as "MCMC") which has wider powers to regulate communications and multimedia matters over the entire Malaysia in general, including that of Sarawak. The purpose of this article is to compare the powers of SMA and MCMC with the aim to propose for the empowerment of the SMA with more legal enforcement powers, as it rightfully should be empowered, so that SMA can serve its purpose not only as an executive body in charge of implementing policies of the Sarawak Government, but also as an effective enforcement agency in the scope of communications and multimedia fields in Sarawak. The first section of this article provides an overview of SMA and MCMC. The second section covers the issues of the limited powers and functions of the SMA to regulate relevant communications and multimedia matters in Sarawak. The third section covers the problems of gap and conflict of the powers of SMA. The fourth section discusses comparative study that supports the proposition for law reform to empower SMA with more legal enforcement powers. The fifth section covers critical study of the way to maintain separation of powers between SMA and MCMC if SMA is accorded with regulatory and enforcement powers in future. At the end of this paper, the author offers a recommendation for law reform of empowerment of the SMA with more legal enforcement powers over communications and multimedia matters in Sarawak.

**Keywords:**

Sarawak Multimedia Authority, Malaysian Communications And Multimedia Commission, Communications And Multimedia Law, Public Authority, Regulation, Enforcement

## Introduction

A communications and multimedia authority or commission that is established after a statutory regulatory framework, in any given jurisdiction, is to be a public authority that is supposed to function as regulatory and enforcement agency over a wide scope of areas on communications and multimedia. Bearing this in mind, this article seeks to make a critical comparison over the current roles of the Sarawak Multimedia Authority (hereinafter referred to as “SMA”) and the current roles of the Malaysian Communications and Multimedia Commission (hereinafter referred to as “MCMC”) with the aim of providing a thought-provoking analysis of the potential, in fact supposed, roles of the SMA as a supposed public authority over communications and multimedia matters over the internal regions of Sarawak.

First, the SMA is a regulatory body which is established under Section 3 of the Sarawak Multimedia Authority Ordinance 2017 (hereinafter referred to as “SMAO 2017”). Bearing in mind the need of a regulatory authority to oversee and facilitate regional communication and multimedia and initiatives of the Sarawak Government to transform Sarawak into a Digital Economy powerhouse (Sarawak Multimedia Authority, n.d.; Pustaka Sarawak, n.d.), the Sarawak State Legislative Assembly had enacted an ordinance on 8<sup>th</sup> November 2017 which was assented by the Pemangku Yang di-Pertua Negeri on 30<sup>th</sup> November 2017 and was published in the Gazette on 8<sup>th</sup> December 2017, that is, the SMAO 2017. This 2017 Ordinance is the Sarawak’s state legislation that statutorily establishes the SMA.

Meanwhile, a federal regulatory authority that regulates communications and multimedia activities throughout Malaysia is the MCMC, which was established on 1<sup>st</sup> November 1998 by virtue of the Long Title to the Malaysian Communications and Multimedia Commission Act 1998 (hereinafter referred to as “MCMCA 1998”). MCMC was set up by the Malaysian federal Parliament vide the Preamble of the MCMCA 1998, with the vision of establishing a competitive, efficient and self-regulating communications and multimedia industry in a way that meets the Malaysian economic and social needs (Malaysian Communications and Multimedia Commission, ‘*Vision & Mission*’, n.d.).

As shall be discussed next, particularly as can be seen in Figures 1 and 2, there appears to be common statutory roles of the federal MCMC and the state SMA in terms of functions and powers, at least over communications and multimedia matters. Notwithstanding the striking similarity of the common functions and powers by the two public authorities, while MCMC exercises regulatory and enforcement powers over communications and multimedia related matters, playing its rightful and supposed roles across Malaysia, SMA does not hitherto possess effective regulatory and enforcement powers to play its supposed roles even over regional or non-cross-border communications and multimedia related matters within the jurisdiction of Sarawak. This observation is a cause of concern because a public authority that is established by a statutory regulatory framework ought to be exercising universal roles like ‘*licensing*’ and ‘*regulate*’ (Malaysian Communications and Multimedia Commission, ‘*About us: History*’, n.d.), as what has been objectively exercised not only by MCMC, but also communications and multimedia public authorities from other countries such as, among others, America’s Federal Communications Commission (hereinafter referred to as “FCC”) under the purview of the United States Congress, United Kingdom’s Office of Communications (hereinafter referred to as “Ofcom”) which is under the ministry of the Department for Culture, Media and Sport (hereinafter referred to as “DCMS”), and Singapore’s Info-communications Media

Development Authority (hereinafter referred to as “IMDA”) under the Singapore’s Ministry of Communications and Information.

Therefore, it is important to highlight the problems of lack of powers by SMA to exercise regulatory and enforcement roles over communications and multimedia matters of non-cross-border nature within Sarawak region, to critically examine the reason behind SMA’s inability to perform supposed regulatory and enforcement powers over the aforementioned matters within Sarawak, and to propose recommendation for law reform of empowerment of the SMA with proper roles to enable it to practically implement regulatory and enforcement exercises over communications and multimedia matters in the jurisdiction of Sarawak.

### **Literature review**

The scope of this study focuses on comparative study between SMA and any standard public authority for communications and multimedia industry in local and some other countries, in order to highlight the extent of incompatibility of SMA with other regulatory multimedia authorities owing to the lack of regulatory and enforcement powers over communications and multimedia matters even in Sarawak.

Saadah Wok and Shafizan Mohamed (2017) wrote that a communications and multimedia authority for the country, MCMC, is an authority that is accorded with powers to exercise regulatory functions of controlling, blocking and filtering internet that comes within its jurisdiction, as well as powers to remove online content in accordance with the law. In other country, for example, America, Ashley Packard (2010) explained that FCC is in charge of licensing for digital service providers, to monitor digital contents and to protect universal access, among others.

Meanwhile, in as far as any similarity between SMA and MCMC is concerned, SMA and MCMC have thus far played their collaborative roles in jointly developing and improving broadband connectivity and broadband infrastructure in Sarawak, as mentioned by Chai Lee Goi (2022).

### **Methodology**

This study adopts a doctrinal method and uses a qualitative approach. Data collection from the aforementioned approach includes searching relevant materials such as written laws, *hansard*, case law, secondary documents such as published booklet, framework document, media statement, journals and books, among others. This approach is used to produce comparative analysis of law in the context of comparing the legal positions of the current functions and powers of SMA, MCMC and other communications and multimedia authorities like FCC, Ofcom under DCMS, and IMDA for the purposes of identifying the legal problem comprising of the issues of gap or missing powers in SMA and conflicting powers between SMA and MCMC, and to emphasize the importance of law reform to empower SMA with proper regulatory and enforcement roles in a way that tackles the aforementioned issues of gap and conflict in SMA’s powers over non-cross-border communications and multimedia matters in Sarawak.

### **Issues of The Limited Functions and Powers of The Sarawak Multimedia Authority**

The problem with the scope and functions of the SMA is that it only has few scope of areas in the field of communications and multimedia in reality than what it should have had as

compared to its counterpart, MCMC, even over areas of communications and multimedia within the state territorial jurisdiction of Sarawak, and as shall be explained next, such legal problem gives rise to the issues of gap and conflict of the powers of SMA.

Thus far, the primary objectives of the SMA are, among others, spearhead, oversight and facilitation of the development and implementation of the communications and multimedia as well as to drive the initiatives and policies of the Sarawak's Digital Economy (Sarawak Multimedia Authority, 'About Us', n.d.), for example, the electronic wallet called S Pay Global (formerly known as Sarawak Pay, which is a Fintech equivalent to Touch N Go) (S Pay Global, n.d.). When it comes to the relations between SMA and MCMC, Chai Lee Goi (2022) wrote that SMA and MCMC have ventured together to enhance broadband connectivity to the outskirts of Sarawak.

The fact that only the scope of areas of broadband connectivity and broadband infrastructure are accorded to SMA, out of all the scope of areas in communications and multimedia law, shows that in reality, the objectives and activities of SMA are different from that of the MCMC which seeks to implement and enforce the provisions of the communications and multimedia law, supervise and monitor communication and multimedia activities, and promote self-regulation in the communications and multimedia activities, to name a few (Malaysian Communications and Multimedia Commission, 'Our Responsibility', n.d.). This phenomenon is rather peculiar because certain parts of the Sections 9 and 10, Part III, of the SMAO 2017 seem to be in *pari materia* with, and in *mutatis mutandis* of, those in Section 16, Part III, of the Malaysian Communications and Multimedia Commission Act 1998, which clearly provide common powers and functions to both SMA and MCMC in their respective state and federal jurisdictions such as, *inter alia*, functions to advise respective ministries on policy objectives, implement and enforce communication and multimedia laws, and to supervise and monitor communications and multimedia activities, and powers which are necessary to perform their functions.

Figure 1 below outlines the common functions of SMA and MCMC whereas Figure 2 below outlines the common powers of SMA and MCMC.

Functions	Malaysian Communications and Multimedia Commission	Sarawak Multimedia Authority
	Relevant sections in Malaysian Communications and Multimedia Commission Act 1998 [Act 589]	Relevant sections in Sarawak Multimedia Authority Ordinance 2017 [Cap. 73]
Advisory roles	s.16(1)(a)	s.9(a)
Implementation and enforcement	s.16(1)(b)	s.9(b)
Consideration and recommendation for reforms	s.16(1)(d)	s.9(c)
Supervision and monitor	s.16(1)(e)	s.9(e)
Development of industry including area of research and training	s.16(1)(f)	s.9(h)
Rendering of assistance, cooperation and coordination	s.16(1)(i)	s.9(n)
Carrying out of any function	s.16(1)(j)	s.9(p)

**Figure 1: Functions of the Malaysian Communications and Multimedia Commission and Sarawak Multimedia Authority**

Source: Researcher

Powers	Malaysian Communications and Multimedia Commission	Sarawak Multimedia Authority
Relevant legislative provisions providing powers	s.16(2), Malaysian Communications and Multimedia Commission Act 1998 [Act 589]	s.10(1)(o), Sarawak Multimedia Authority Ordinance 2017 [Cap. 73]
Description of the statutory powers	Powers which are necessary for, in connection with, or incidental to, performance of its functions.	Powers to do anything which incidental to, or necessary for, the discharge of its functions.

**Figure 2: Powers of the Malaysian Communications and Multimedia Commission and Sarawak Multimedia Authority**

Source: Researcher

It is noteworthy to state that MCMC, a creature of the MCMCA 1998, is intended to be the regulatory and enforcement ‘commission’ by virtue of a federal law for communications and multimedia, that is, Section 6 of the Communications and Multimedia Act 1998 (hereinafter referred to as “the main CMA 1998”). The main CMA 1998, read together with MCMCA 1998, are part of a regulatory framework for the communications and multimedia industry that leads to the establishment of MCMC (Malaysian Communications and Multimedia Commission, ‘About us: History’, n.d.).

As can be observed in Figures 1 and 2 above, given the striking similarity between the aforementioned functions and powers of MCMC and SMA as shown in Figures 1 and 2 above, where the MCMCA 1998 is a form of statutory regulatory framework, the SMAO 2017 is thus a reflection of a shadow of a statutory regulatory framework, at least for the region of Sarawak. This is more so as Part VI of the SMAO 2017 provides for “Offences and Penalties” though its scope for offences and penalties is not as extensive as that of the main CMA 1998 at this juncture, given that matters under criminal law are under the prescribed sub-items of Item 4, List I - Federal List of the Ninth Schedule of the Federal Constitution unless a constitutional amendment is made as shall be discussed next. In the light of such reflection of a shadow of a statutory regulatory framework, by right SMA ought to be empowered with regulatory and enforcement powers over communications and multimedia matters that are happening in the internal region of Sarawak. After all, the Sarawak State Legislative Assembly Speaker, Tan Sri Awang Asfia Mohd. Nasar, himself said during the Second Reading of the Sarawak Multimedia Authority Bill on 8th November 2017 that it is up to the federal government and Sarawak government to deliberate on whether SMA should be empowered with functions and powers like those of MCMC in the future (Speaker Awang Asfia, 2017a).

In spite of the common powers and functions of SMA and MCMC, however, the scope of the powers and functions of the SMA are really limited and restricted, even when it comes to matters involving communications and multimedia within its jurisdictions in Sarawak. As a result of the lack of SMA’s involvement in regulatory and enforcement exercises over the territories of Sarawak, such phenomenon gives rise to the current legal problems of gap and conflict of the powers of SMA as a supposed enforcement agency for the state of Sarawak.

## Legal Problems of Gap/Missing Powers and Conflict of The Powers of The Sarawak Multimedia Authority

On the one hand, the gap or missing powers of SMA, in the context of communications and multimedia aspects within Sarawak, is the SMA's inability to combat crime in misuse of communications in technology, something which is 'objectively' exercised by standard communications and multimedia authority everywhere, be it the national MCMC, or the foreign FCC, Ofcom and IMDA.

The examples of misuse of communications in technology are non-exhaustive, for example, improper use of network facilities or network service contrary to Section 233 of the main CMA 1998 (see, for example, *Martina bt Abu Hanifa v PP*, 2021), unlawful use, possession or supply of non-standard equipment or device contrary to Section 239 of the main CMA 1998, such as importation of complete mobile phones without permit (see, for example, *Bumi Telecommunication and IT Supply Sdn Bhd v Khairil Anuar bin Ismail & Ors*, 2014), or illegal satellite dishes (MCMC intensifies crackdown on illegal satellite dishes, 2019). The problem here is that instead of SMA having powers to prosecute over crimes of misuse of communication in technology as it should, MCMC still has powers to do so in the jurisdiction of Sarawak, leaving SMA not truly functioning what it should have functioned as a state regulatory authority even over digital criminal matters happening within Sarawak. Such missing power of SMA does not go well to be in line with the rule of *lex situs* in respect of the jurisdiction where a crime was committed (Fong, J.J.S. 2021), namely, the reason of applicability of *lex situs* in criminal law is due to the reason of enforcement in the jurisdiction of the place where the crime was committed (Kirk B. Moberley, 1933).

On the other hand, the conflict of the powers of SMA, in the context of communications and multimedia aspects within Sarawak, is the conflicting statutory powers between SMA and MCMC over enforcement of laws against illegal structures erected or maintained in any part of Sarawak for the purposes of communications and multimedia activities.

On this area of conflicting powers between SMA and MCMC, as far as the federal law is concerned, Section 215 of the main CMA 1998 is a federal law which provides for installation of network facilities which includes structures. Sections 126(1)(a) and (b) of the main CMA 1998 prohibits unlicensed ownership or provision of network facilities or unlicensed provision of network services, whereas Section 126(2) of the main CMA 1998 stipulates penalties for ownership or provision of network facilities or services without licence, which are fine not exceeding RM500,000.00 or imprisonment of not more than 5 years or both. Meanwhile, as far as Sarawak state law is concerned, Section 26 of SMAO 2017 criminalizes on unauthorized erection, use, maintenance or operation of any structure for purposes of communication and multimedia activities. The penalties, upon conviction under Section 26(2) of SMAO 2017, are fine not exceeding RM1,000,000.00 or imprisonment of not more than 10 years or both.

Here, it can be observed that there are two somewhat similar legislative provisions, namely Section 26 of SMAO 2017, a Sarawak state law, and Sections 126 and 215 of the main CMA 1998, a federal law. The conflict is even more apparent by yet another intriguingly similar provisions among the two laws: Section 215(2) of the main CMA 1998 states that any authorized installation of a network facility "*may require the approval of the State Authority, local authority, or other relevant authority, if necessary*", but simultaneously, Proviso to Section 26(2) of SMAO 2017 stipulates that "*...nothing in this section shall affect the powers*

*conferred on any other relevant authorities by any other written laws*”. As explained earlier, when it comes to criminal law matter such as installation of illegal structure for communications and multimedia activities, the rule of *lex situs* is the answer, namely, to apply and enforce the law in respect of the jurisdiction where a crime was committed (Fong, J.J.S. 2021, and Kirk B. Moberley, 1933). However, just as one thought that *lex situs* in criminal law is the answer, it is not the answer in reality: for example, a case study back in 2017 shows that when two companies which were the then contractors of the Pan Borneo Highway caused damage to a Telekom Malaysia’s fiber optic cable network in Sri Aman, which is a ‘district of Sarawak’, they were prosecuted solely by MCMC, not SMA, under Section 235 of the main CMA 1998 which prohibits damage to network facilities, leaving SMA out of the picture (Razali, 2022).

Given that crime in misuse of communications in technology and installation of illegal structure for communications and multimedia activities in the state of Sarawak is a criminal matter necessarily invoking criminal law, the rule of law of *lex situs* in respect of the jurisdiction where a crime was committed ought to be followed. This means, SMA ought to be in charge of regulation and enforcement of all non-cross-border activities in communications and multimedia within Sarawak region in as far as they involve compliance and prosecution for infringement, among others.

What is more, SMA is not a private entity, but a public authority by virtue of Section 14(2) of the SMAO 2017 which applies the Public Authorities Protection Act 1948 in a similar fashion like how Section 51 of the MCMCA 1998 applies the said Public Authorities Protection Act 1948 to MCMC. Coupled with the common functions and powers between SMA and MCMC as shown in Figures 1 and 2 above, it is pertinent to state that SMA ought to be functioning as a regulatory authority with proper powers and functions to regulate communications and multimedia activities within the jurisdiction of Sarawak.

### **Comparative Study to Support the Proposition for Empowerment of The Sarawak Multimedia Authority**

It is about time for SMA to play its supposed roles as a regulatory authority with proper powers and functions to regulate communications and multimedia activities within the jurisdiction of Sarawak, something which a public authority for communications and multimedia should be doing. For instance, SMA’s counterpart, MCMC, is doing its regulatory functions to control, block and filter the internet in Malaysia as well as power to remove online content in accordance with the law as highlighted by Saodah Wok and Shafizan Mohamed (2017).

#### ***American Model***

Comparative study of the model from the United States of America reveals that FCC, created by virtue of Section 1, Title I of the Communications Act of 1934, is a regulatory authority regulating matters involving cross-states’ and international communications, which is an independent public agency under the purview of the Congress (Federal Communications Commission, ‘*About the FCC*’, n.d.). Ashley Packard (2010) pointed out that FCC is responsible for issuing licence to service providers, safeguarding universal access, and controlling digital contents, among others.

### **United Kingdom Model**

Comparative study of the model from the United Kingdom, which consists of England, Wales, Scotland and Northern Ireland, reveals that in the context of communications and multimedia fields, there is a central department called the Department for Culture, Media and Sport (Department for Culture, Media and Sport, n.d.) in which its minister, namely the Secretary of State for Culture, Media and Sport, is the minister in charge of a statutory regulatory body created by virtue of Section 1 of the Office of Communications Act 2002, called the Office of Communications (known as “Ofcom”) (Department for Culture, Media and Sport and The Office of Communications (OFCOM) Framework Document, 2016). Although communications and multimedia matters largely remained as centralized matters for England and other regions, but there are reservations for related regional communications and multimedia matters, such as telecommunications and interception of communications, among others, to Scottish government (Scotland Act 1998, Schedule 5, Sections B8, C10 and K1), Welsh government (Government of Wales Act 2006, Schedule 7A, Sections B4, C9 and K1), and Northern Irish government (Northern Ireland Act 1998, Schedule 3, Paragraph 29), as per the following in Figure 3.

United Kingdom regions other than England	Source of regional law for reserved matters	Provisions and particulars of reserved matters
Wales	Schedule 7A, Government of Wales Act 2006 [Cap. 32]	<ul style="list-style-type: none"> <li>• Paragraph B4 on interception of communications, communications data and surveillance</li> <li>• Paragraph C9 on telecommunications and wireless telegraphy</li> <li>• Paragraph K1 on media, including broadcasting</li> </ul>
Scotland	Schedule 5, Scotland Act 1998 [Cap. 46]	<ul style="list-style-type: none"> <li>• Paragraph B8 on national security, interception of communications, official secrets and terrorism</li> <li>• Paragraph C10 on telecommunications and wireless telegraphy</li> <li>• Paragraph K1 on broadcasting</li> </ul>
Northern Ireland	Schedule 3, Northern Ireland Act 1998 [Cap. 47]	<ul style="list-style-type: none"> <li>• Paragraph 29 on telecommunications, wireless telegraphy, programme services, internet services and electronic encryption</li> </ul>

**Figure 3: Reserved Matters for Different Regions in The United Kingdom**

Source: Researcher

One noteworthy example of devolved matter can be observed with reference to Scotland: as broadcasting is a state-reserved matter for Scotland, hence broadcasting of Gaelic programmes is supported by Scottish government and funded by them vide Gaelic Television Fund (Robert Dunbar, 2004; Wilson McLeod, 2020). This practice of centralised and devolved administration, regulation and enforcement of communications and multimedia matters will further support the proposition that SMA should be empowered with more legal enforcement powers over communications and multimedia activities in Sarawak state, especially given that Malaysia practices federalism (Andrew Harding and James Chin, 2014) dividing powers and matters between general (federal) and regional (state) authorities, each having its own administrative functions according to its given scope (Mohammad Agus Yusoff, 2008).



### ***Singapore Model***

Comparative study of the model from the Singapore reveals that Info-communications Media Development Authority (hereinafter referred to as “IMDA”), created by virtue of Section 3 of the Info-communications Media Development Authority Act 2016, is a regulatory authority under the Ministry of Communications and Information (Ministry of Communications and Information, ‘Agencies’, n.d.). The scope of IMDA’s roles include regulation of telecommunication system, media services, internet and electronic commerce, among others, in accordance with the provisions in Section 5 of the Info-communications Media Development Authority 2016, and the power to issue codes of practice and monitor its compliance, control and regulate telecommunication systems and services, among others, in accordance with the provisions in Section 6 of the Info-communications Media Development Authority 2016.

### **Maintenance of Separation of Powers Between Sarawak Multimedia Authority and Malaysian Communications and Multimedia Commission if Sarawak Multimedia Authority is Further Empowered in Future**

Having discussed the comparison and comparative study, the issue that needs to be pre-empted, in the context of communications and multimedia law, is the issue of possible encroachment of federal matters under the scope of federal authority, MCMC by the state authority, SMA (Member of State Legislative Assembly Chong Chieng Jen, 2017) which could pose the issue of separation of powers. As demonstrated in Figure 4 next on proposed constitutional amendment, the issue of separation of powers in the context of encroachment of federal matters by Sarawak state agency would not arise so long as clear and unambiguous areas in the communications and multimedia field are defined and the like regulatory and enforcement powers in the ‘Federal List’ be concurrently extended to ‘Supplement to Concurrent List for State of Sarawak’, which would help SMA play its proper roles as “*a sister agency of MCMC*” (Tan Sri Annuar Musa, as cited in MCMC to assist SMA to keep digital economy agenda on track, 2021) rather than not effectively functioning like one.

This means, SMA ought to be accorded with regulatory and enforcement powers to control communications and multimedia matters of non-cross-border nature within Sarawak, and as shall be explained below, should constitutional and necessary legislative amendments be implemented for this purpose in future, MCMC would have the overall federal jurisdiction to control communications and multimedia matters covering cross-border matters which are originated from or directed to Sarawak, and across all the other states in Malaysia other than Sarawak.

### **Recommendation for The Empowerment of The Sarawak Multimedia Authority for Sarawak Region**

As elaborated above, SMA would need to be granted, vide legislative measures, with more legal enforcement powers in order for it to practically exercise a major role in the conduct of overseeing, monitoring and regulating communications and multimedia matters in Sarawak so that SMA can truly serve its supposed regulatory powers and functions in a way that is compatible with its federal counterpart, MCMC.

The ‘federal matters’ that are part of communications and multimedia activities are provided in the List I – Federal List, Ninth Schedule of the Federal Constitution, as per the following:

- Criminal law (Item 4 as a whole) in the cybercrime or misuse of communications in technology);
- Communications such as posts and telecommunications (Item 10(g));
- Communications such as wireless, broadcasting and television (Item 10(h));
- Censorship (Item 22);
- Theatres, cinemas, cinematograph films, places of public amusement (Item 23), but these are subject to Item 5(f) of the List II – State List

Meanwhile, the ‘state matters’ that are part of communications and multimedia activities are only confined to one area as described in Item 5(f) of List II – State List, Ninth Schedule of the Federal Constitution:

- Services of a local character such as licensing of theatres, cinemas and places of public amusement (Item 5(f))

The recommendation for the empowerment of the SMA with more legal enforcement powers over communications and multimedia matters in Sarawak is by way of constitutional amendment to incorporate the relevant matters in the List I – Federal List into the List IIIA – Supplement to Concurrent List for States of Sabah and Sarawak, of both of the Ninth Schedule, of the Federal Constitution. The proposition for constitutional amendment within the Ninth Schedule of the Federal Constitution is based on the concept of incorporating Items 4, 10(g), 10(h) and 22 of List I – Federal List into List IIIA – Supplement to Concurrent List for States of Sabah and Sarawak, only for Sarawak. Below is the concept of proposed constitutional amendment on List IIIA – Supplement to Concurrent List for States of Sabah and Sarawak:

“18. In Sabah until the end of the year 1970 (but not in Sarawak), medicine and health, including the matters specified in items 14(a) to (d) of the Federal List.

19. In Sarawak (but not in Sabah), communications and multimedia within the region of Sarawak in so far as they relate to the matters specified in items 4, 10(g) and (h) and 22 of the Federal List.”

**[“Proposed Amendment”]**

#### **Figure 4: Proposition For Law Reform By Way Of Constitutional Amendment**

Source: Researcher

If implemented, the desired results arising from constitutional and necessary legislative amendments would yield the following roles for SMA and subsequently MCMC:-

- SMA: Communications and multimedia matters of non-cross-border nature within the region of Sarawak.

- MCMC: Communications and multimedia matters of cross-border nature which are originated from, or directed to, Sarawak, and across all the other states in Malaysia other than Sarawak.

As for the question of which regionally specific communications and multimedia matters ought to be regulated by SMA so that they do not encroach with the general federal jurisdiction of MCMC other than matters involving crime in misuse of communications in technology and installation of illegal structure for communications and multimedia activities in Sarawak region, coupled with the question on law reform, on whether a specially amended SMAO 2017 or the specially amended main CMA 1998 to incorporate SMA as another public authority alongside MCMC in the interpretation section of Section 6 of the main CMA 1998 ought to be used to classify the areas for substantive communications and multimedia law for non-cross-border matters for Sarawak, this would be subjected to detailed plans to be worked out by the relevant stakeholders, namely, MCMC, SMA, Attorney General's Chambers of Malaysia, Sarawak State Attorney General's Chambers, Malaysian Parliament and the Sarawak State Legislative Assembly in future should this recommendation be adopted. As had been clearly advised by the Sarawak State Legislative Assembly Speaker, Tan Sri Awang Asfia Mohd. Nasar, himself during the Second Reading of the Sarawak Multimedia Authority Bill, it is up to the federal government and Sarawak government to deliberate on whether SMA should be empowered with functions and powers like those of MCMC in the future (Speaker Awang Asfia, 2017a).

### **Conclusion**

By the comparison between SMA and MCMC and the comparative study between SMA and communications and multimedia authorities in other countries, it can be seen that SMA is not functioning as a truly full-fledged regulatory authority in the territory of Sarawak. The reason SMA does not possess regulatory and enforcement functions and powers to manage and control communications and multimedia matters in Sarawak is that the main law for communications and multimedia law in Malaysia, the main CMA 1998, is not extended to SMA the way it is accorded to MCMC. It is important to state that at this juncture, the aforementioned federal law on communications and multimedia is derived from relevant matters in List I – Federal List, Ninth Schedule of the Federal Constitution.

Like any standard statutory regulatory authority which derives its powers from a regulatory framework which exercise 'objective' roles of regulation and enforcement, SMA ought to exercise the like 'objective' roles of regulation and enforcement powers, subject to such rights and powers confined to regional matters within the jurisdictions in Sarawak on day-to-day basis. As such, it is proposed that SMA be granted with more legal enforcement powers by way of legislative amendments, firstly by way of constitutional amendment to incorporate the relevant matters in the List I – Federal List into the List IIIA – Supplement to Concurrent List for States of Sabah and Sarawak but only for Sarawak, both of the Ninth Schedule, of the Federal Constitution, so that SMA can truly be a communications and multimedia regulatory body which is compatible with its parent counterpart, the MCMC, having more legal enforcement powers to deal with regional, non-cross-border based, communications and multimedia activities in Sarawak. As for the detailed classification of all regionally specific communications and multimedia matters to be regulated by SMA within Sarawak, this is a matter that is best left to be worked out by the relevant federal and Sarawak state lawmakers and public stakeholders in catering the pathway for further empowerment of SMA with proper

regulatory and enforcement powers over non-cross-border communications and multimedia area in the future.

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