

A close-up photograph of a smartphone home screen with various social media app icons. The icons include Facebook, Messenger, Periscope, Twitter, LinkedIn, and WhatsApp. A semi-transparent blue overlay is positioned on the left side of the screen, containing the title and presenter information. The Dentons logo is visible in the top right corner of the overlay.

Media & Content Regulation in the Middle East

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Introduction & Course Overview

1. Doing Business in the UAE
2. Media and Content Regulation - The Framework
3. Ripped from the Headlines - Real Life Examples
4. Localizing Content for the Region
5. Conclusion / Q&A

Doing Business in the UAE

- The United Arab Emirates (UAE) is a constitutional federation comprised of 7 emirates, each with its own ruler:
 - Abu Dhabi (capital)
 - Dubai
 - Sharjah
 - Ras al-Khaimah
 - Ajman
 - Umm al-Quwain
 - Fujairah
- There are also a number of established "free zones" in the UAE (essentially, defined economic or trade zones that allow for certain benefits not typically available to "mainland" companies)
- Legislative powers arise at a federal, emirate and free zone level
- Official language spoken is Arabic
- Primary religion is Islam

Doing Business in the UAE (cont'd)

- Organizations wanting to do business in the UAE first determine the most appropriate route to market - this may involve:
 - establishing an entity (one or more, need to determine free zone or mainland)
 - appointing a local agent / distributor
- In the media space, there are two particularly popular free zone choices:
 - twofour54 (Abu Dhabi)
 - Dubai Creative Clusters Authority (DCCA, formerly known as the Dubai Technology and Media Free Zone)



- deciding on where to set up in the UAE is driven by a number of factors including the industry sector, intended scope of business activities, tax considerations, etc.

Doing Business in the UAE (cont'd)

- Many legal frameworks in the UAE remain quite embryonic or opaque - this is especially the case in the technology, media & telecoms space
- Typically, relevant provisions are scattered across a number of different instruments
 - some may be sector-specific
 - many simply set out very high level / generic rights (such as rights to privacy in the Constitution)
 - some topics may be addressed at an emirate, federal and free zone level simultaneously which can give rise to conflict
- Draft laws may be in place - but difficult to predict when they may be enacted or the ultimate scope
- Civil law system = lack of binding precedent
- The Arabic text is the only "official" version of the law for mainland regimes
- Many technical terms become lost in translation - especially in the regulatory development and reform process

Media & Content Regulation - The Framework Today

- Publications and Publishing Law of 1980 ("**Press Law**")
- Federal Law No. 5 of 2012 On Combatting Cybercrimes ("**Cybercrimes Law**")
- Federal Decree by Law No. 2 of 2015 against Discrimination and Hatred ("**Discrimination Law**")
- Federal Law No. (3) of 1987 Promulgating the Penal Code ("**Penal Code**")
- Content regulation - various sources across legal regimes (in particular **National Media Council** instruments)
- TRA social media whitepapers



Press Law

- Regime promulgated in 1980
- It is becoming decreasingly relevant due to the proliferation of new types of digital media / technology
 - scope is aimed more at traditional means of printing / publication
- Much talk of a new regime to be enacted soon
- Interpreted in conjunction with the National Media Council (NMC) guidelines (discussed in further detail shortly).

Cybercrimes Law

- **Article 16:** Punishment of **Blackmailing or Threatening** a Person to perform or refrain from an action by using an Information Network or an Information Technology Tool
- **Article 17:** Punishment of Preparing, Distributing, **Publishing or Re-Publishing of Pornographic Materials, Gambling Activities or Materials that Prejudice Public Morals** through an Information Network
- **Article 20:** Punishment of **Insulting a Third party** and Making them Subject to Punishment or Contempt by Third party through Using an Information Network or an Information Technology Tool
- **Article 21:** Punishment of **Assaulting the Privacy of a Person** in Cases other than those Permitted in Law by using an Information Network, Electronic Information System or any of the Information Technology Tool
- **Article 22:** Punishment of Using an Information Network, Electronic Site or Information Technology Tool without Permission to **Expose Confidential Information**
- **Article 28:** Punishment of Establishing or Operating an Electronic Site or Publishing Information, Graphics or News that may **Expose State Security and Interests, Danger and Prejudice Public Order, or Inciting assaults on Judicial Officers or Law Enforcement.**
- **Article 29:** Punishment of **Publishing Information, News or Rumors** on an Electronic Site or Information Technology Tool or any Information Network for the purpose of Cynicism and Harming the Status of the State and its Institutions
- **Article 42:** Court *may* decide **Deportation of a Foreigner** who is condemned in any of the crimes concerning honour or crimes specified in the decree upon punishment being declared.

Cybercrimes Law (cont'd)

- 2016 amends to VPN provision – massively over exaggerated and misinterpreted in the press:

Article 9: Punishment of Circumvention on the Protocol Address of the Internet for the Purpose of Committing a Crime or Preventing its Discovery

Any person that circumvents the protocol address of the internet by using a delusive address or an address belonging to third party or by any other means for the purpose of committing a crime or preventing its discovery, shall be punished by imprisonment and a fine of not less than (AED 150,000) and not exceeding (AED 500,000) or by any of these punishments.

- The 2016 Amending Law replaces the operative section of Article 9 with the following:

Whoever uses a fraudulent computer network protocol address (IP address) by using a false address or a third-party address or by any other means for the purpose of committing a crime or preventing its discovery, shall be punished by temporary imprisonment and a fine of not less than AED 500,000 and not exceeding AED 2,000,000, or either of these two penalties.

Cybercrimes Law (cont'd)

- The substantive legal position did not actually change!
- Potential risk exposure, however, did –
 - significant increase in monetary fines for using a VPN "for the purpose of committing a crime or preventing its discovery".
- Penalties under the Cybercrimes Law include fines, imprisonment, confiscation of IT equipment and/or deportation



But...What is an Illegal use of a VPN?

- This remains a grey area
- Some potential uses would clearly be illegal –
 - e.g. using a VPN to commit fraud
- Others are less clear-cut –
 - e.g. accessing restricted services or content
- The TRA list of Prohibited Content Categories is a useful guide



TRA Prohibited Content Categories - Directly Quoted

"1. Bypassing blocked Content

This category includes Internet Content that allow or assist Users to access Blocked Content.

2. Pornography, nudity, and vice

This category includes Internet Content that contains material of a pornographic nature, or relates or depicts acts of homosexuality, nudity and sexual material (including stories, jokes, animations, and video) or Internet Content that promotes sexual activity. It includes Internet Content which promote the distribution of above material (such as Peer-to-peer websites and links).

3. Impersonation, fraud and phishing

Internet content that is used in practices of deception, fraud, theft and embezzlement. This includes content that compiles, publishes, or allows others to have access to sensitive personal information such as bank details, credit card info, secretive access codes to websites, and personal email data, as well as promote witchcraft, voodoo or sorcery.

4. Insult, slander, and defamation

Any content that includes materials of above categories, particularly publicity which exposes the victim to public hatred or contempt or publishes false accusation that dishonours or discredits the victim in the public eye. Dealt with again in Section 5.

5. Invasion of Privacy

Internet content that provides tools for phone tapping, theft, and recording or intercepting communications without consent. Additionally, this category includes content that exposes any information related to a person's private or family life which will harm his/her reputation, wealth or trade name, or for purpose of blackmail. Furthermore it includes, sensitive medical information, confidential public corporation information, and content which illegally allows access to private addresses and phone numbers for purpose of spam.

TRA Prohibited Content Categories - Directly Quoted (cont'd)

6. Offences against UAE and public order

Internet content that offends against, is objectionable to, or is contrary to the public interest, public morality, public order, public and national security, Islam morality or is otherwise prohibited by any applicable UAE law, regulation, procedure, order or requirement. This includes but is not limited to content ridiculing state symbols and leaders, organizing and promoting demonstrations, news on military affairs, and information that would harm the national currency or lead to confusion about the economic conditions of the country.

7. Supporting criminal acts and skills

This category includes Internet Content that either provides instructions for or identifies methods to promote, encourage, or provide the skills to commit illegal or criminal or unethical activities. These include bomb-making, phreaking (breaching phone security or phone service theft), scams and fraud, terrorism, evading law enforcement, stalking, lock picking, selling pirated material such as commercial software, music, videos, or others.

8. Drugs

This category includes Internet Content that provide information on purchasing, manufacturing, promoting and using illegal drugs.

9. Medical and pharmaceutical practices in violation of the laws

Category includes Internet Content on health establishments and medical professionals in violation of relevant laws, medical advertisements in violation of cabinet resolutions, and promoting prohibited or unlicensed medical products.

10. Infringement of IP rights

Internet Content that infringes the rights of IP such as providing books, movies, photos, drawings, games, etc. in electronic form. Includes websites that provide information and tools on how to infringe IP such as sites helping access pirated movies.

TRA Prohibited Content Categories - Directly Quoted (cont'd)

11. Discrimination, racism, and contempt of religion

Internet Content which contains or promotes offending, insulting or ridiculing the religions and their books, rites and sanctities. Additionally includes content which contains or promotes leaving Islam or converting to any religion besides Islam, atheism, sorcery and witchcraft, and raising racism and sectarianism to harm national unity and public order.

12. Viruses and malicious programs

This category includes Internet Content that distribute information and tools for hacking (root kits, kiddy scripts, etc.) that help individuals gain unauthorized access to computer systems. Also include Internet Content that distributes tools or information for producing and distributing malicious codes such as viruses, worms or Trojan horses.

Exemptions: information security including ethical hacking.

13. Promotion of or trading in prohibited commodities and services

Includes sites that promote, use or advertise commodities and services prohibited under UAE laws or those that are not properly licensed in accordance with the relevant law. Some examples include counterfeit money, books and drawings contrary to Islam or public morals, endangered species, liquor, tobacco, and counterfeit goods.

14. Illegal Communication Services

Internet content that allow or promote access to illegal communication services according to the relevant regulation.

15. Gambling

This category includes Internet Content that is relevant to gambling or such as gambling links, tips, sports picks, lottery results, as well as horse, car or boat racing.

TRA Prohibited Content Categories - Directly Quoted (cont'd)

16. Terrorism

This category includes Internet Content of terrorism groups and related Internet Content that support terrorism and publish and distribute materials for terrorism or include material for training and encouraging terrorism or help to serve terrorism groups such as funding, facilitating communication and other direct and indirect services.

17. Prohibited Top Level Domains

This category includes top-level domains on the internet allocated for purposes that violate the laws of the UAE (irrespective of the content on that website).

Example: top-level domains for pornography .xxx

18. Illegal Activities

All other Internet Content that violates the laws of the UAE other than those aforementioned. This can include calling for donations without an authorized license and displaying content from organizations banned in the UAE.

19. Upon order from judicial authorities or in accordance with the law

Internet Content that is blocked by order from a judicial authority (local or federal) or public prosecution in the UAE whether criminal, civil, or commercial. "

Discrimination Law

- The Discrimination Law makes it a criminal offense to commit an act of "religion contempt"
- This very broadly includes any act which offends or disparages religion (defined as Islam, Christianity or Judaism), by any means (which expressly includes via a communications network, website or by audio/visual means)
- It also criminalizes the possession, publication, or distribution (electronically or otherwise) of any content that may promote discrimination or hatred
- Penalties include fines and imprisonment

Penal Code

- **Article 362**

Shall be liable to the same penalty provided for in the preceding Article any individual who manufactures, imports, exports, owns, acquires, transports with the intention to exploit, **distribute or offer to others, any writings, drawings, pictures, films, symbols or any other things contrary to public morals**. Shall also be subject to the same punishment any individual who advertises any of such things.

- **Article 378**

A person shall be punished by detention and a fine if he **prejudices the privacy of the individual or family life** by committing any of the following acts other than in the events as permitted by law or without the consent of the victim:

A. To **eavesdrop, record or transmit by any device of any kind whatsoever conversations** in a private place or by way of telephone or any other device.

B. To **take or transmit by any device of any kind whatsoever a photo of a person in a private place**.

The same penalty shall apply if a person **publishes by any means of publicity news, photos or comments related to the private life or family life secrets of individuals, even if they are true**.

- **Article 176**

A person shall be punished by detention for no more than five years if he **insults by any means of publicity the President of the State or its flag or national emblem**.

Spotlight on Defamation - How is it Addressed?

Some key relevant federal law provisions:

- Federal Law No. 3 of 1987 (as amended) ("the **Penal Code**") -

Article 372: a "publicity" which exposes the victim to public hatred or contempt

Article 373: a "publicity" that disgraces the honour or modesty of another person

Article 374: addresses instances of "slander"

- Federal Law No. 5 of 2012 (as amended) ("the **Cybercrimes Law**") -

Article 20: insulting a person using any means of technology

Article 21: modifying any content "for the purpose of defamation or insulting another person"

- Federal Law No. 15 of 1980 (the "**Press Law**")

Chapter 7 - "Materials Prohibited to be Published": various clauses in this Chapter of the Press Law deal with insult / defamation (including prohibitions on criticism of UAE and other "friendly state" rulers & system, Arab civilization / heritage and Islam).

- Also touched upon in various other frameworks, such as in NMC guidelines and resolutions, TRA prohibited content categories, etc.

Spotlight on Defamation - How is it Addressed (cont'd)?

- Violations have been interpreted to include oral and published remarks
 - under the Penal Code, publication is considered an "*aggravating circumstance*", as are circumstances where the abuse has been directed at a public official in the context of performing his or her duties.
- Possible for these provisions to be interpreted very broadly - resulting in potential for imprisonment or monetary penalties depending on charging provision:
 - up to 2 years or 20,000 AED under the Penal Code;
 - not less than 1 year and/or between AED 150,000 - 500,000 under the Cybercrimes Law; and
 - not less than 1 month and not more than 6 months and/or AED 1,000 - 5,000 under the Press Law.
- Unlike some other jurisdictions in the world, the fact that a statement may be *true* is not necessarily a defense to a defamation claim.
- Possible that even a mere criticism of a person may be considered to be defamation - need to consider context and circumstances very carefully.

NMC Content Guidelines

The NMC has published the following content guidelines - remember, when you post something on social media, YOU are the "publisher" / "distributor":

1. Not to offend God and/or Islamic beliefs and shall respect other monotheistic religions.
2. Respect the regime in the UAE, its symbols and its political institutions.
3. Respect the cultural heritage of the UAE.
4. Not abuse national unity and social cohesion and not to provoke sectarian, regional and tribal strife.
5. Respect the attitudes and policies adopted by the UAE at the domestic level and at the level of its relations with other countries.
6. Not to abuse the economic system in the State and not spread rumours, biased and misleading news.
7. Respect the directions of the State to promote national identity and the integration of citizens in the media labour market.
8. Respect the principles and codes of ethics in the media industry.
9. Not publish and transmit any information that may harm children, women and other social groups and not incite hatred and violence.
10. Respect intellectual property rights.

NMC - New Media Resolutions

- In 2017, the National Media Council (NMC) issued a new Cabinet Resolution Concerning Media Content (No. 23 of 2017).
- Key element of note = it expressly expanded the application of UAE media-specific regulation to apply to digital content production and distribution.
- It also states that it applies to media free zones.
- Sets out a number of media content standards (many of which are already covered in other regimes such as the Press Law, Penal Code and Cybercrimes Law) - for example:
 - respect Islamic and religious beliefs;
 - respect the State and its cultural heritage, symbols and institutions;
 - not contain anything that harms national unity or security or the economy of the State;
 - not cause harm to vulnerable members of society; and
 - respect intellectual property rights.
- Further - purports to establish / require NMC to facilitate:
 - a Website Censorship Committee;
 - a permit requirement - both "Circulation Permits" and "Printing Permits" are contemplated; and
 - devising age classification requirements for various content.

NMC - New Media Resolutions (cont'd)

- In 2018, the NMC issued a set of *Digital Regulations* under the Cabinet Resolution Concerning Media Content (No. 23 of 2017), discussed on the previous slide.
- The *Digital Regulations* apply to both onshore and free zone entities, and capture any online activity that involves:
 - digital promotion / advertisement;
 - news websites;
 - digital publishing activities; and
 - presenting and selling of print, video or audio materials.
- They establish a mandatory licensing regime -
 - "traditional mass media" outlets (such as newspapers, magazines, television and radio) will need to license their websites under the Digital Regulations.
 - Individuals who use personal sites/blogs/social media platforms to engage in commercial/sale/promotional activities (therefore including so-called social media influencers) will also require a license - not clear yet in terms of exactly who would be caught, if any relevant thresholds, if payments need to exchange hands (or if payment 'in kind' is sufficient) - pending further NMC guidance.
 - Fees for a new licence range from AED 1,000 - 15,000, valid for one year.

TRA social media whitepapers

- Published by the TRA to provide user-friendly guidance for using social media
- Includes papers on Facebook, Twitter, LinkedIn and YouTube (amongst others)
- Does not carry force of law but can be a helpful guideline for the average user
- Available here: <http://www.tra.gov.ae/en/eparticipation/whitepapers.aspx>



TRA social media whitepapers (cont'd)

- Facebook guidelines include as follows:
 - "Facebook should not be used by those under 13 years of age.
 - You must not use hate speech, or use any wording or post anything on Facebook or send messages through Facebook that incite violence against others.
 - You must not send any images or videos of a pornographic nature.
 - You must not use Facebook to intimidate or harass any person.
 - You must respect others' privacy on Facebook to the extent that any users have set their privacy options on Facebook to private, and otherwise noting that the UAE laws do not permit you to take photos or videos of others without their consent.
 - You must not tamper with the Facebook website by way of viruses or other malicious codes.
 - You must not collect login information for other users for any reason.
 - You must not transfer ownership of an account or give out your account password to anyone else without the prior written consent of Facebook.
 - You must adhere to the Facebook guidelines for use and any policies Facebook issues to its users.
 - Facebook has the rights to any content you upload onto Facebook, to use it in anyway in its full discretion, and you must be aware of this.
 - Personal information you upload to Facebook may be seen by others, and may be used outside of Facebook and you must be aware of this."



Content Regulation in the UAE - in Summary

- Relevant provisions appear across various legal and regulatory instruments
- Many of these provisions are very broad and subjective -
 - e.g. content that is "contrary to public morals"
- Some are much more specific and prescriptive -
 - e.g. gambling content or use of unlicensed VoIP (such as Skype)
- Again, TRA prohibited content categories are a good rule of thumb (important to keep abreast of changes to the list)
- Further criteria as issued by the National Media Council (NMC) is also helpful

Ripped From the Headlines - Real Life Examples



Real Life Examples (cont'd)

- Facebook posts soliciting donations for a charity raising funds for refugee children.
- In violation of UAE charity laws - not registered with the Department of Islamic Affairs and Charitable Activities.
- Also contrary to Cybercrimes Law provisions.



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Real Life Examples (cont'd)



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Real Life Examples (cont'd)

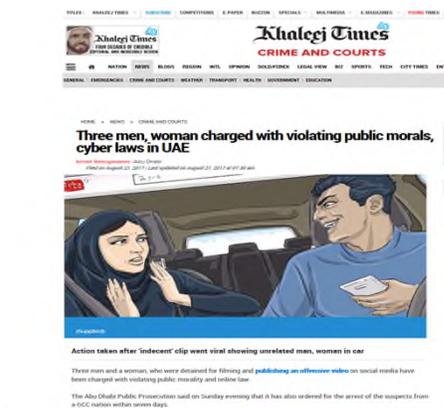
- Any online activity that insults or offends the UAE, its rulers or national emblems is taken very seriously.



- Posting photo of car along with insults of the owner was found to be in violation of the Cybercrimes Law.

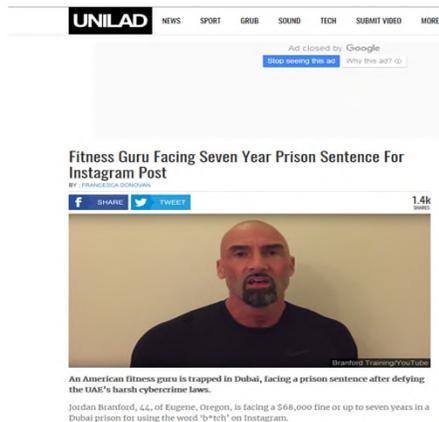


Real Life Examples (cont'd)



- 6 minute YouTube clip of an unrelated man and woman having a conversation in a car leaves both individuals, plus man who uploaded the content, facing jail time

- American in Dubai who posted an Instagram story with the word B*tch concerning his ex-wife, now facing 7 years jail time and/or hefty fine in violation of Cybercrimes Law



Summing Up - Do's and Don'ts

- **Most importantly - remember that you can be held accountable for anything done online the same way you can offline!**
- When you post something online - YOU are the publisher
- Be respectful of others:
 - do not violate privacy or confidentiality
 - do not insult or offend
- Be respectful of the laws of the UAE:
 - do not post or access prohibited content or services
 - respect intellectual property rights of others
- Be respectful of the state and its rulers
- If in doubt, do not post!

Localizing content - NMC Advertising Guidelines

1. "Not to offend the divinity and Islamic beliefs, and respect other religions.
2. Respect the regime in the United Arab Emirates, and its symbols and political institutions.
3. Respect the cultural and civilization heritage of the United Arab Emirates.
4. Not to compromise the national unity and social cohesion, and not to incite sectarian, confessional and tribal dissensions.
5. Respect the trends and policies of the UAE at the internal level, and in terms of relations with other countries.
6. Not to violate the economic system of the State, and to avoid spreading rumors and ill-intended and misleading news.
7. Respect the State's orientation to enhance the national identity thereof.
8. Respect ethical principles and values in media work.
9. Refrain from publishing and broadcasting information that may be offensive to children, women and other social groups, or that which may incite hatred and violence.
10. Not to publish obscene photos or words.
11. It is not permitted to promote the acts of sorcery and astrological predictions.
12. Comply with the conditions and controls related to the State flag, National emblem and anthem.
13. Respect the intellectual property.
14. Comply with ethical behavior and honesty and integrity standards including the respect of the rules governing business, especially the controls for the protection of the consumer, fair competition, and the prohibition of commercial fraud and illegal monopoly.
15. It is not permitted to advertise for alcoholic beverages nor narcotic substances prohibited in any way, whether directly or indirectly.
16. It is not permitted to advertise for tobacco and smoking of any kind and regardless of the method of use thereof, nor any goods and services which are prohibited to advertise for.
17. Abide by the controls of health related advertisements as stipulated by the Ministerial Resolution No. 4 of 2007 on health related advertisements."

Localizing content: religion

- “Not to offend the divinity and Islamic beliefs, and respect other religions” (NMC AS).
- Religious humour: “Nandos” advert, Dubai, UAE.



Localizing content: religion (cont'd)

- McDonald's “wrapped” Ramadan campaign, Leo Burnett Kreasindo, Indonesia – adverts showed burgers wrapped during fasting hours and then uncovered after Iftar.
- Respect for Islam - “deeper cultural understanding”.

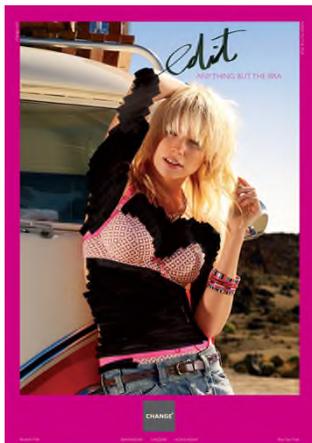


Localizing content: cultural values

- NMC Advertising Standards 2012 (Article 4)
- “Respect the culture..”
- “Do not publish obscene photos or words”
- MZA (twofour54) Content Code 2016 (Rule 10.2)
- “All forms of advertising must:
 - be legal, decent, honest and truthful
 - be prepared with a sense of responsibility towards the audience and towards wider UAE society
 - fully consider and be respectful of religion and different cultures...”

Localizing content: cultural values (cont'd)

Advertising campaign for “Change” in Jeddah, Saudi Arabia, Ogilvy.



*“edit anything
but the bra”*

*“cover anything
but the lingerie”*

Transform
censorship into
art

Strike balance
between
sensitivities and
creativity.

Localizing content: innuendo

- Prevailing conservative attitude in the UAE to sexually suggestive material.
- A certain degree of innuendo may be permissible - depends also on intended audience and wider context.

Localizing content: alcohol

- NMC rule: *"It is not permitted to advertise alcoholic beverages.. in any way, whether directly or indirectly"*
- Belgian Café: removed "beer" from name/logo.
- Indirect/alternate words: hops/grape/bubbles?



Localizing content: alcohol (cont'd)

- NMC rule: *“It is not permitted to advertise alcoholic beverages.. in any way, whether directly or indirectly”*
- Spectrum on One adverts, Genius Loci, UAE: alcohol is focus.



Content compliance

- **Who has editorial responsibility?** i.e. ensure appropriate level of editorial, compliance and legal scrutiny?
- **Refer-up procedure** i.e. ensure difficult decisions are made by appropriately experienced/senior staff: “if in doubt, refer”.
- **Monitoring** i.e. spot checking internally to ensure procedures are complied with and content is being “referred up”.
- **Risk management** through training and awareness of advertising/editorial teams.
- **Enforcement/penalties:** range from apology to stopping campaign to suspending/revoking license.

Conclusion

- The UAE and wider Middle East region is comprised of rapidly growing markets attracting all kinds of new business and investment.
- Legal frameworks can still be opaque and embryonic - needs a fair amount of due diligence before making formal market entry steps.
- Media and content is more strictly regulated than in other markets -
 - there are many sensitivities to be aware of;
 - potential for fines and imprisonment in the event of violations.
- Strike a balance between respect, sensitivity and creativity when localizing content.

Any questions?



Thank you



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