



LAWS OF MALAYSIA

Act A1220

**COMMUNICATIONS AND MULTIMEDIA
(AMENDMENT) ACT 2004**

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LAWS OF MALAYSIA**Act A1220****COMMUNICATIONS AND MULTIMEDIA
(AMENDMENT) ACT 2004**

An Act to amend the Communications and Multimedia Act 1998.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Communications and Multimedia (Amendment) Act 2004.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 4

2. The Communications and Multimedia Act 1998 [*Act 588*], which is referred to as the “principal Act” in this Act, is amended in paragraph 4(2)(*b*) by deleting the words “or will provide”.

Amendment of section 6

3. Section 6 of the principal Act is amended by substituting for the definition of “network facilities provider” the following definition:

‘ “network facilities provider” means a person who owns or provides any network facilities;’.

Amendment of section 16

4. Subsection 16(2) of the principal Act is amended by inserting after the words “for such offence” the words “and, in the case of a continuing offence, may prescribe, in addition to such penalties, a fine of one thousand ringgit for every day or part of a day during which the offence continues after conviction”.

New section 23A

5. The principal Act is amended by inserting after section 23 the following section:

“Enforcement of decision of Appeal Tribunal

23A. Any decision given by the Appeal Tribunal may be enforced in the same manner as a judgement or an order of the High Court.”.

Amendment of section 24

6. Section 24 of the principal Act is amended by deleting the words “determine, in accordance with section 10, and”.

New section 24A

7. The principal Act is amended by inserting after section 24 the following section:

“Powers of Appeal Tribunal

24A. The Appeal Tribunal shall have the power—

- (a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;

- (b) to procure and receive evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses as the Appeal Tribunal thinks necessary to procure, receive or examine;
- (c) where a person is so summoned, to require the production of any book, paper, document, record or other thing in his possession or under his control and which the Appeal Tribunal may consider necessary for the purposes of the appeal;
- (d) to administer any oath, affirmation or statutory declaration, as the case may require;
- (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
- (f) of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt;
- (g) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (h) to adjourn the hearing of an appeal from time to time, including the power to adjourn to consider its decision; and
- (i) to generally direct and do all such things as may be necessary or expedient for the expeditious decision of the appeal.”.

New sections 26A, 26B, 26C, 26D and 26E

8. The principal Act is amended by inserting after section 26 the following sections:

“Secretary of Appeal Tribunal and other officers

26A. (1) The Minister shall designate a public officer as a Secretary of the Appeal Tribunal to assist the Appeal Tribunal in carrying out its function under this Act.

(2) The Minister may designate such number of other public officers as the Minister thinks fit to assist the Secretary in carrying out his function under subsection (1).

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Appeal Tribunal.

Obligation of secrecy

26B. (1) Except for this Part or for the purposes of any civil or criminal proceedings under any written law, or where authorized by the Minister—

- (a) the Chairman, members of the Appeal Tribunal or any officer of the Appeal Tribunal shall not, during the time he serves as such Chairman, member or officer, disclose any information obtained by him in the course of his duties; and
- (b) no other person who has, by any means, access to any information or document relating to the affairs of the Appeal Tribunal shall disclose such information or document.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Public servants and public officers

26C. The Chairman and all members and officers of the Appeal Tribunal, while discharging their duties as the Chairman and such members and officers, shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*], and to be public officers for the purposes of the Criminal Procedure Code [*Act 593*].

Application of Public Authorities Protection Act 1948

26D. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Appeal Tribunal, Chairman or any member or

officer of the Appeal Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

Act or omission done in good faith

26E. No action or suit shall be instituted or maintained in any court against—

- (a) the Appeal Tribunal;
- (b) the Chairman or any member of the Appeal Tribunal;
- (c) the Secretary or any other officer of the Appeal Tribunal; or
- (d) a person authorized to act for and on behalf of the Appeal Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act and any subsidiary legislation made under this Act.”.

Amendment of section 30

9. Subsection 30(9) of the principal Act is amended by substituting for the word “determined” the words “decided upon”.

Amendment of section 34

10. Subsection 34(2) of the principal Act is amended by substituting for the word “determined” the words “decided upon”.

Amendment of section 36

11. Subsection 36(1) of the principal Act is amended by deleting the words “, sub-licensed”.

Amendment of section 80

12. Section 80 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) The Commission shall not publish any information or any part of any information disclosed to it if the publication would—

- (a) disclose a matter of a confidential character;

- (b) be likely to prejudice the fair trial of a person; or
- (c) involve the unreasonable disclosure of personal information about any individual (including a deceased person),

but the Commission may publish an abstract relating to such information provided that the particulars in the abstract shall not be arranged in any way which would compromise or prejudice the person providing such information.”.

Amendment of section 104

13. Section 104 of the principal Act is amended by inserting the words “(1)” immediately after the words “**104.**”.

Amendment of section 147

14. Subsection 147(2) of the principal Act is amended by substituting for the words “and that the access forum was unanimous in supporting the recommendation” the words “and that not less than nine-tenths of the members of the access forum support the recommendation”.

Amendment of section 157

15. Subsection 157(1) of the principal Act is amended by substituting for the words “transmit in any part” the words “use any part”.

Amendment of section 187

16. The principal Act is amended by substituting for section 187 the following section:

“Exemption from offence provisions

187. A network facilities provider, network service provider, applications service provider or content applications service provider who is not required to have an individual licence, and is not subject to class licence, under Part VI and IX, is deemed to have been exempted from the offence provisions of section 188.”.

Amendment of section 188

17. Section 188 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “A person who provides any network service or applications service” the words “Any network facilities provider, network service provider, applications service provider or content applications service provider”; and
- (b) in subsection (2), by substituting for the words “A person” the words “A network facilities provider, network service provider, applications service provider or content applications service provider”.

Amendment of section 193

18. The principal Act is amended by substituting for section 193 the following section:

“Minister’s direction to provide required application service

193. (1) The Minister may determine—

- (a) the classes of applications service providers who shall undertake any or all of the applications services on the list of required applications services; or
- (b) the classes of network service providers who shall enable the provision of any or all of the applications services on the list of required applications services.

(2) The Commission shall direct—

- (a) the class of applications service providers determined under paragraph (1)(a) to provide the required applications services; and
- (b) the class of network service providers determined under paragraph (1)(b) to enable the provision of the required applications services.”.

Amendment of section 204

19. Subsection 204(2) of the principal Act is amended by inserting after the words “this Act,” the words “or by any other person”.

