

Impact of Section 114 A of Evidence Act 2012 on Technology & Business Sectors

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McKinsey and Google joint research, 'Online and Upcoming: The Internet's Impact on Aspiring Countries' estimates that the Internet contributed US\$9.75 billion of Malaysia's 2010 GDP US\$238 billion – a 4.1% contribution slightly edging the United States' 3.8% and Japan's 4.0%, but far outpacing the average 1.9% of the 30 countries in the "aspiring" sector. ¹

McKinsey defines "aspiring" nations as developing countries that are on the cusp of becoming developed. Malaysia is one such aspiring country. McKinsey analysts, when asked what were the key factors differentiating Malaysia from other aspiring nations, said the Multimedia Super Corridor (MSC Malaysia) initiative was one such factor. The MSC helped because it was a relatively liberal "free trade zone" when it came to foreign human resources, tech transfer and knowledge transfer. The "No-Internet-Censorship" pledge helped too.

Multimedia Development Corporation (MDeC) is the lead agency for the PM's Digital Transformation Programme, which will be named Digital Malaysia but is essentially Phase 3 of the overall MSC vision. MDeC has gone on record to say that Digital Malaysia will include incentivizing and encouraging "outside-the-box" businesses, with a lot of attention being paid to startups and entrepreneurs. Such businesses can only come into being when people are free to explore ideas and express themselves. This is an essential mind-set required for entrepreneurship.

At many recent startups events, including the Asian Business Angels Forum, many Silicon Valley venture capitalists expressed interest in investing in Malaysia because they felt the start-up environment here was more liberal. This amendment will have a chilling effect on their enthusiasm.

Social media is now a very big part of business worldwide – in a different study, McKinsey predicts that the era of social media in business will trigger the birth of five times as many new job types as internal IT did.² This amendment in fact, threatens to put up barriers to businesses in Malaysia adopting and encouraging social media use within their organizations. It threatens the business model of both emerging and established businesses in Malaysia whose success depends on participatory Internet communities.

This amendment is also a bad news for kopitiam and mamak stalls. Under the law, they can be held liable for any activity conducted using the free WiFi services they provide. As a result, many of the owners might opt not to provide free WiFi. However, recently Dewan Bandaraya Kuala Lumpur (DBKL) made it compulsory for food and beverage businesses including restaurants, cafes, pubs, bars and club

¹http://www.mckinsey.com/Client_Service/High_Tech/Latest_thinking/Impact_of_the_internet_on_aspiring_countries

² <http://www.digitalnewsasia.com/node/52>

lounges occupying more than 120sq m in floor space in the city to provide free WiFi service. Although lauded by many, this new regulation puts the restaurant owners in a dilemma. Section 114 A makes it risky for them to provide free WiFi but under DBKL new rule, they have no choice but to provide the service.

Many service providers – including big companies like Maxis, DiGi, Celcom, Telekom – are generally unaware of their liability under the new amendment. Their legal departments should really have a look into this to study the potential risks posed by the new law.

The Government may say the law won't be used this way, but that's just a verbal assurance that has no say over the actual letter of the law. This covers both criminal and civil actions – so there is still room for mischief or abuse.

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<http://www.digitalnewsasia.com/node/226>

Evidence Act: We are all sitting ducks!

<http://www.digitalnewsasia.com/node/209>

Evidence Act amendments, a slippery slope

<http://www.digitalnewsasia.com/node/165>

ⁱ This document was prepared for a briefing to opposition Members of Parliaments on this issue on 28 June 2012 organised by Centre of Independent Journalism