

## The Influence of E-ASEAN in the Development of ICT Law in Malaysia

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**Abstract:** The growth of information communication technology in Malaysia was demonstrated with the launching of the Multimedia Super Corridor (MSC) in 1996. This fully supported mega project by the Malaysian Government is a gateway to the ICT industry in Malaysia with the objective to attract world class technology companies while preparing the local ICT industry. The companies that develop or use multimedia technologies to produce and enhance their products and services may be granted the MSC Malaysia status and be located in any 26 Cybercities and Cybercentres in Malaysia. The award of this MSC status comes with incentives, rights and privileges from the MSC Malaysia Bill of Guarantees. Amongst all is Malaysia assures to become a regional leader in intellectual property protection and cyber laws. As a member of e-ASEAN this assurance seems to go in line with the e-ASEAN emphasis of to adopt electronic commerce regulatory and legislative frameworks that create trust and confidence for consumers and facilitate the transformation of businesses towards the development of e-ASEAN. It is the objective of this paper to identify and analyse the extent of compliance of e-ASEAN by the Malaysian Government particularly in the legal and regulatory framework.

**Key words:** Information communication technology, development, law, E-ASEAN, Malaysia

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### INTRODUCTION

The implementation of information communication technology in the daily life has changed the way researchers live today. Computers and Internet have become powerful tools and to certain extent making decisions on our behalf. The huge potential of these devices has given impact not only on social well being but importantly on the economic growth of a country. The expeditious use of ICT in Malaysia as in any other countries has enhanced the development of the economy. The many positive sides of ICT do not deny the risks bring about by this technology. Although, Malaysian government believes that ICT is a strategic driver to support and contribute directly to the growth of Malaysian economy, they realize that there must be legal mechanism in place to monitor and control the feasible situations. It is the primary objective of the mega project of Malaysian Multimedia Super Corridor to prepare Malaysia as an ICT hub with a complete regulatory framework.

### RESEARCH MATERIALS AND METHODOLOGIES

The legal study conducted was qualitative in nature. Being so, research methodologies of library research and critical analysis were used in analyzing relevant materials, data and information. This legal study has collected relevant materials, data and information on e-ASEAN in general. These were critically assessed and analyzed.

### DEVELOPMENT OF ICT IN MALAYSIA

**The progress:** Since, its independent in 1957, Malaysia had been adopting agriculture base economy to support the development of its basic infrastructure particularly in the rural area. In 1969, after the racial riots, the new economy policy was formulated to exterminate poverty and to do away with the racial segregation based on socio economic function and geography (Kuppusamy and Shanmugam, 2007). During the 1980s, the ICT infrastructure was prepared in the form of basic telephony services to rural and urban area with the aim of increasing access to mobile and fixed-line services (Kuppusamy *et al.*, 2009).

The Vision 2020, a national vision formulated in 1991 was aimed to bring Malaysia at par with developed countries by year 2020. This Vision was a turning point to transform Malaysia to knowledge driven society which relying on the ICT to play a major role.

The announcement of 8th Malaysian plan in the year of 2001 to 2005 has taken into account the existence of K-economy and the potential growth of digital infrastructure. This was then followed by the 9th Malaysian plan of 2006 to 2010 which incorporated the enhancement of ICT as one of its agenda. The effort towards these can be seen in their initiatives to build vital ICT infrastructure in public and private sectors. The increased usage of ICT infrastructure has led to the need of national information security which was reflected in the establishment of emergency response centre to oversee

regulatory, technical and internet security (Jehangir *et al.*, 2011). With this well preparation, Malaysia is ready to adopt ICT in everyday life which includes in the industry of e-Commerce, e-Education and e-Health or telemedicine.

These strategic plans were then continuously demonstrated through increasing accessibility to Internet and its related services which include wired and wireless technologies to increase broadband services throughout the country. Competition in the telecommunication services was encouraged by allowing entry of new players. This resulted in existence of competitive products and services in the market especially cheaper internet service. The ICT connectivity in rural areas was intensified in the year 2000 where 33 pilot community-based internet centres were established countrywide (12 of which were in rural areas). This followed by an additional 31 Internet/Information Centres developed throughout the country between 2001 to 2003 and a 13 national pilot projects of NITC Strategic Task Force conducted through a Public-Private Partnership Model (Kuppusamy *et al.*, 2009).

The ICT development was boosted up with the carrying out of Malaysian US20 billion mega project of Multimedia Super Corridor.

**Multimedia super corridor Malaysia:** On 12 February 1996, the historic launching of the Multimedia Super Corridor was carried out with the aim of accelerating the objectives of Vision 2020. This currently known as MSC Malaysia is an important program to achieve the creation of knowledge based society. Amongst the initiatives taken were the formation of MSC flagship which serves as Multimedia hub for players and users in the multimedia industry.

This fully supported mega project by the Malaysian Government is a gateway to the ICT industry in Malaysia with the objective to attract world class technology companies while preparing the local ICT industry. The companies that develop or use multimedia technologies to produce and enhance their products and services may be granted the MSC Malaysia status and be located in any 26 Cybercities and Cybercentres in Malaysia. The award of this MSC status comes with incentives, rights and privileges from the MSC Malaysia Bill of Guarantees. Amongst all is Malaysia assures to become a regional leader in intellectual property protection and cyber laws.

MSC Malaysia operates in an area of approximately 15 km (9.3 mi)×50 km (31 mi) (that is 750 km<sup>2</sup> (290 sq mi)) beginning from the Petronas Twin Towers, in the city of Kuala Lumpur to the Kuala Lumpur International Airport in Sepang including the towns of Putrajaya and Cyberjaya. The town of Port Klang was later added to the MSC Malaysia on 7 December 2006.

To ensure the well-progressed of this project, the Multimedia Development Corporation (MDeC, formerly MDC) was established to monitor the development of the MSC Malaysia (Kuppusamy *et al.*, 2009).

#### **ASEAN ICT INITIATIVE: E-ASEAN**

**e-ASEAN and the elements:** ICT is one of the key economic sectors in ASEAN as well as an enabler to increase competitiveness for other industry sectors. Realising its importance, the ASEAN leaders have taken a proactive action by establishing e-ASEAN in the Annual Summit Meeting in Manila on 28 November 1999 which ultimately signed during ASEAN Informal Summit in Singapore in Nov. 2000 (Anil, 2001).

The primary objective of this initiative is to develop a broad-based and comprehensive action plan including physical, legal, logistical, social and economic infrastructure needed to promote an “ASEAN e-Space” as part of an ASEAN positioning and branding strategy (Quimbo, 2004). Table 1 explains on the activities and cooperation relating to ICT in ASEAN countries

**e-ASEAN legal framework:** The signing of e-ASEAN Framework Agreement in November 2000 has made possible the establishment of the ASEAN Information Infrastructure (AII) which focuses on the hardware and software systems needed to access, processing and sharing information and promoting the growth of electronic commerce in the region. For that purpose, the ASEAN countries shall adopt the electronic commerce regulatory and legislative frameworks that build up trust and confidence for users of the technology. It has been spelled out in the agreement that Member states shall:

- Expediently put in place national laws and policies relating to electronic commerce transactions based on international norms
- Facilitate the establishment of mutual recognition of digital signature frameworks
- Facilitate secure regional electronic transactions, payments and settlements, through mechanisms such as electronic payment gateways
- Adopt measures to protect intellectual property rights arising from e-Commerce. Member States should consider adoption of the World Intellectual Property Organization (WIPO) treaties, namely: “WIPO Copyright Treaty 1996” and “WIPO Performances and Phonograms Treaty 1996”

Table 1: Elements of e-ASEAN

Elements	Description
ASEAN Information Infrastructure (AII)	Enhance interconnectivity and interoperability of national information infrastructures by 2001, encourage cooperation, internet exchanges and gateways, regional caching/mirroring, hubbing facilitate the development of the AII backbone
Goods and services	Liberalization of trade in goods accelerate tariff reduction, liberalization of trade in services, accelerate framework agreement on services, investment promotion in ICT sector, extend incentives, facilitation of trade, fast track MRA implementation
e-Society	Foster development of a knowledge-based society, narrow the digital divide, enhance workforce competitiveness, facilitate flow of knowledge workers in the region. Use technology to enhance the spirit of ASEAN community
e-Commerce friendly environment	Agree on regional standards based on international norms, electronic identification and authentication (such as PKI), secure electronic payments and settlements, legal recognition of electronic transaction based on UNCITRAL, code of e-Commerce practice (UCC), implementation schedules, e-Commerce code based on UNCITRAL for all countries by 2003, for those with e-Commerce legal infrastructure: encourage mutual recognition and crosscertification of digital signatures and documents by 2001; facilitate secure regional electronic payments and settlements by 2002 at the latest
e-Government	Use ICT to: enhance delivery of services to the people, facilitate free flow of goods, data and movement of people within ASEAN, facilitate linkages between public and private sector and promote transparency, enhance inter-governmental cooperation

- Take measures to promote personal data protection and consumer privacy
- Encourage the use of Alternative Dispute Resolution (ADR) mechanisms for online transactions

**THE MALAYSIAN PERSPECTIVE**

**Law and regulatory framework:** The law relating to ICT has been in place in Malaysia even before e-ASEAN was established. Beginning in the year 1996 with the launching of the MSC Malaysia, there were four cyber laws introduced namely the Computer Crime Act 1997, the Digital Signature Act, the Telemedicine Act 1997 and the Copyright Act 1987 (Amendment Act in 1997).

The purpose of legislating these Acts is to facilitate the development of ICT systems by countering the threats and abuses related to such systems. The ICT related laws are continued to develop with the institution of another four legislations that are the Communication and Multimedia Act 1998, the Electronic Commerce Act 2006, the Electronic Government Activities Act 2007 and the recent Personal Data Protection Act 2010.

Along with the specific legislations for ICT related issues, the available traditional laws may also be applied as long as the issue concern fits in with the legal element provided in the traditional statutes. For example, the application of the Computer Crimes Act 1997 and the Electronic Commerce Act are supported by the parent Act of the respective Penal Code and the Contract Act 1950.

**Conformity of e-ASEAN obligation by Malaysian Legal Framework (an analysis):** Rapid development of ICT has caused huge challenge to the legislators to provide effective legal mechanism to protect users of ICT. Despite of that, the Malaysian Government has been proactive in equipping the legal system with necessary statutory

legislations. It is submitted that with the enactment of cyber laws, Malaysia as the member state of ASEAN, in particular the signatory country of e-ASEAN has fulfilled the obligations required in the e-ASEAN Framework Agreement.

ICT offers some new and highly sophisticated opportunities for law breaking and they create the potential to commit traditional type of crime in non-traditional ways. One of the obvious problems occurred by the usage of this technology is cyber-crimes. The enforcement of the CCA 1997 effected from the beginning of June 2000 should be seen as an apparatus in combating the acute problems of cyber-crimes. Under this law, unauthorised access/modification to any programme or data held in computer is an offence and will be penalised.

Anonymous nature of cyber space has called for additional security protection. Thus, the Digital Signature Act was enacted to inculcate confidence and encourage the public to perform secured electronic transactions domestically as well as internationally. Under the Act, the digital signature provides a verification system to authenticate the identity of researchers and verify the transmitted message.

Being one of the seven flagships in the MSC Malaysia, telemedicine or tele-health activities should be given attention to ensure proper protection. The Telemedicine Act 1997 was enacted to provide the regulatory framework for the practice of Telemedicine and to recognise the use of multimedia in the practice of medicine.

Digital element of ICT enables the act of free riding through unauthorised copying and pasting primarily on the internet. The Copyright Act 1987 was amended in 1996 and 1997 to cope with this issue by extending copyright protection to internet transactions. The amendments were

made by taking into account development in information technology and the latest developments related to copyright under the World Intellectual Property Ownership (WIPO) Copyright Treaty 1996. The scope of copyright protection has been widened where an author is also given exclusive right of control. New copyright infringements and offences have been further identified and regulated under this act.

Convergence of three major technologies, i.e., telecommunication, broadcasting and information leads to the creation of the Communication and Multimedia Act 1998. This Act covers communications over the electronic media and does not affect the application of existing laws on national security, illegal content, defamation and copyright. This act regulates various activities such as network facilities providers, network service providers, application service providers and content application services providers. Under this act, the Minister is given the flexibility to grant licences for particular types of activity as he deems fit. This flexibility is to address of the changing requirements as the industry evolves.

Easy access of Internet service in Malaysia encourages the electronic commerce transactions by not only large companies but also small scale enterprises. These contractual transactions may bring legal disputes which may be solved by the electronic commerce Act 2006. This Act provides for legal recognition of electronic messages in commercial transactions; the uses of the electronic messages to fulfil legal requirements and to enable facilitate commercial transactions through the use of electronic means and other matters connected therewith.

Electronic communication amongst government servants as well as the government and the citizens requires a comprehensive legal framework for efficient and secure electronic government services. This is provided under the Electronic Government Activities Act (EGAA) 2007 which came into effect 1 January, 2008. The EGAA 2007 applies to agencies that are ready to handle electronic dealings. It does not grant any additional legal rights or change any substantive law.

From the earlier analysis, it demonstrates that Malaysia has satisfied the covenant that was agreed upon

in the e-ASEAN Agreement. Having such comprehensive legislations, however, is not sufficient without serious commitment in the implementation of those laws.

## CONCLUSION

The ASEAN initiative to necessitate uniform standard in implementing ICT throughout ASEAN region was a useful effort. This will give opportunity to all member countries to benefit the current ICT without neglecting the need of regulating the use of the technologies. Although, some countries such as Malaysia have adopted relevant laws to ensure secure and effective use of ICT, the enforcement would still struggle to overcome the issues if no or limited cooperation from the member states. In a borderless electronic world, ASEAN member states cannot confine themselves within the region thus it is important to seek outside assistance and learn lessons from both inside and outside.

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