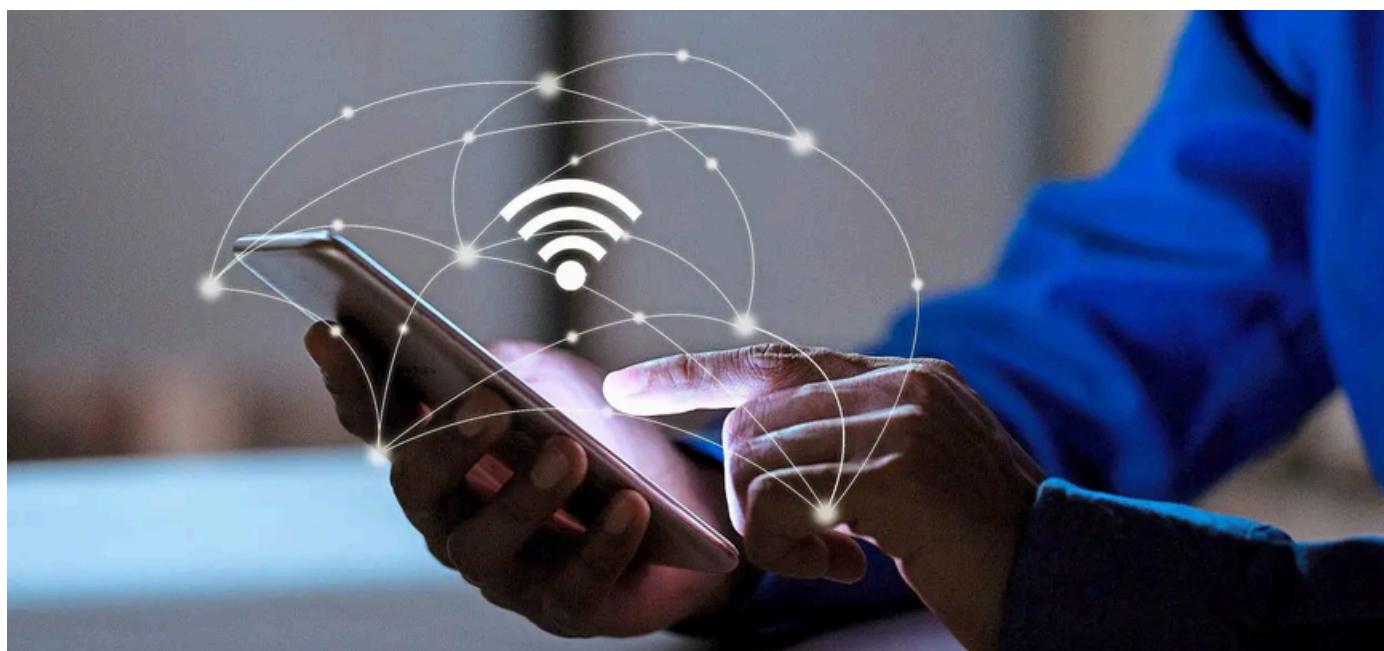


AMENDMENTS TO THE COMMUNICATIONS AND MULTIMEDIA ACT 1998 Tabled for First Reading

6 December 2024



On 2nd December 2024, the Communications and Multimedia (Amendment) Bill 2024 (“**Amendment Bill**”) was tabled in Parliament for its first reading by the Minister of Communications, Fahmi Fadzil. Amendments to the Malaysian Communications and Multimedia Commission Act 1998, which aim to revise the composition of the Malaysian Communications and Multimedia Commission (“**MCMC**”) and expand on their functions, were also tabled for first reading on the same day.

The Amendment Bill proposes amendments to the Communications and Multimedia Act 1998 (“**CMA**”) with the primary purpose of protecting against harmful online behaviour, addressing network security risks, and expanding the powers of enforcement conferred on the MCMC. Some of the salient amendments proposed via the Amendment Bill are set out below:

	Amendment Bill	CMA
Powers to Address Network Security Risks	<p>Section 230B of the CMA (new provision) – Provides the MCMC with the power to instruct any persons to take specific measures or comply with specific requirements to prevent, detect, or counter a network security risk.</p> <p>A “network security risk” is defined as “any risk or threat, if exploited or not mitigated, could pose a significant risk of damage or disruption to the operation of network facilities, network services, or application services”.</p>	The CMA currently does not grant the MCMC such powers.

<p>Amendments to Section 233 of the CMA – Addressing Prohibited Content</p>	<p>Section 233 of the CMA (amendments to an existing provision) – Section 233 of the CMA is amended such that the term '<i>offensive</i>' has been replaced with '<i>grossly offensive</i>'. Section 233 has also been expanded such that transmitting prohibited content with intent to commit offences involving '<i>fraud or dishonesty against any person</i>' are now also offences.</p> <p>Section 233(2) of the CMA now establishes a higher penalty of a fine up to RM 500,000 and/or imprisonment for up to 2 years, with further fines of RM 5,000 per day the offence continues after conviction. Where the offence is committed against a minor, the offender can be subject to imprisonment for up to 5 years.</p> <p>The Amendment Bill also introduces Explanations to Section 233 which outline the types of content prohibited by the section.</p>	<p>Section 233 of the CMA currently imposes lower penalties – fines of up to RM50,000 and/or imprisonment for up to one year and a further fine of RM1,000 per day the offence continues after conviction.</p> <p>The CMA also currently provides no explanations as to the types of content prohibited by Section 233.</p>
<p>Specific Provision on Spam</p>	<p>Section 233A of the CMA (new provision) – This new provision specifically prohibits the sending of "<i>unsolicited commercial electronic messages</i>" (i.e., spam).</p>	<p>Under the CMA, offences relating to spam are currently typically dealt with under Section 233(1)(b).</p>
<p>Suspension of Content Application Service Providers' Services</p>	<p>Section 211A of the CMA (new provision) – Provides the MCMC with the power to, by written direction, require content application service providers to suspend their services for a specified period if in violation of content requirements, in breach of their license conditions in relation to content, or where generally non-compliant with any instruments issued by the MCMC or the Minister of Communications.</p>	<p>The MCMC does not currently have such powers under the CMA.</p>
<p>Increased Penalties</p>	<p>The Amendment Bill increases the penalties of various offences. As examples:</p>	<p>The current penalty under Section 242 imposes a fine of up to RM 100,000 and/or imprisonment for up to 2 years.</p>

	<ul style="list-style-type: none"> • Section 242 of the CMA, which provides the penalty for, among others, omissions to comply with the CMA, breach of license conditions, or when dealing with offences for which no specific penalty is provided in the CMA, will be amended to impose a fine of up to RM 1 million and/or imprisonment for up to 5 years. • Section 53 of the CMA, which provides the penalty for non-compliance with an MCMC direction, will be amended to impose a fine of up to RM 1 million and/or imprisonment for up to 10 years. <p>The Amendment Bill also adds continuing penalties for various offences, such as:</p> <ul style="list-style-type: none"> • Section 53 (non-compliance with an MCMC direction) - Fine of RM100,000 for every day or part of a day an offence is continued after conviction. • Section 157 (use of spectrum without assignment) - Fine of RM100,000 for every day or part of a day an offence is continued after conviction. 	<p>The current penalty under Section 53 of the CMA imposes a fine of up to RM 300,000 and/or imprisonment for up to 3 years.</p>
<p>Civil Right of Action for Victims of Counterfeit Access Devices</p>	<p>Section 236A of the CMA (new provision) - Any person who suffers loss or damage directly as a result of a contravention of Section 235 (damage to network facilities) or 236 (fraud and related activity in connection with access devices) of the CMA have an express right to take civil action against alleged offenders, regardless of whether they have been charged with an offence under the CMA.</p>	<p>No civil right of action is currently granted under the CMA.</p>

<p>MCMC Empowered to Conduct Audits</p>	<p>Section 73A of the CMA (new provision) – Provides the MCMC with the ability to conduct audits on any licensee or provider of services relating to communications systems on any matter under the CMA, its subsidiary legislation, any instrument issued under the CMA, or any information furnished to the MCMC.</p> <p>Section 73B of the CMA (new provision) – Allows the MCMC to require any licensee to appoint its own independent expert to carry out an audit, with the licensee bearing the costs of the appointment.</p>	<p>Under the CMA, no power to audit is currently accorded to the MCMC.</p>
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Commentary

With the reading of the Amendment Bill, affected parties should take note of the upcoming amendments to ensure that they remain in compliance with the changing regulations, particularly given the introduction of harsher penalties for some offences. In particular, given the introduction of additional powers of enforcement against prohibited content, it is recommended that content service application providers take pre-emptive action in monitoring and removing infringing content to avoid suspension. Licensees should also take greater precautions to abide by the provisions of the CMA and their license conditions, given the harsher penalties proposed by the Amendment Bill.

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