Malaysia upgraded its electronic signature laws and electronic commerce laws in 2006 and introduced new privacy laws in 2010. These measures provide a strong level of protection for the digital economy and cloud computing in Malaysia.

Intellectual property law in Malaysia is reasonably strong; further provisions in relation to circumvention technology could improve it.

One risk in Malaysia is that cybercrime laws require significant expansion to comply with international models and provide an adequate level of protection for cloud computing and the digital economy.

Malaysia has a moderate level of broadband penetration. It has committed to a target of providing 75% of households with access to high-speed broadband by 2015.

<table>
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<tr>
<th>Q MALAYSIA</th>
<th>RESPONSE</th>
<th>EXPLANATORY TEXT</th>
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</thead>
<tbody>
<tr>
<td><strong>DATA PRIVACY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Are there laws or regulations governing the collection, use or other</td>
<td>✔</td>
<td>The Personal Data Protection Act 2010 covers the private sector only.</td>
</tr>
<tr>
<td>processing of personal information?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. What is scope &amp; coverage of privacy law?</td>
<td>Sectoral</td>
<td>The Personal Data Protection Act 2010 only covers the private sector — Government agencies are exempt.</td>
</tr>
<tr>
<td>3. Is the privacy law compatible with the Privacy Principles in the EU</td>
<td>❔</td>
<td>Malaysia is a member of APEC. The Personal Data Protection Act 2010 closely mirrors the principles in the EU Directive, with some variations that appear to adopt parts of the APEC Privacy framework.</td>
</tr>
<tr>
<td>Data Protection Directive?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Is the privacy law compatible with the Privacy Principles the APEC</td>
<td>✔</td>
<td>Malaysia is a member of APEC. The Personal Data Protection Act 2010 closely mirrors the principles in the EU Directive, with some variations that appear to adopt parts of the APEC Privacy framework.</td>
</tr>
<tr>
<td>Privacy Framework?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Is an independent private right of action available for breaches of</td>
<td>Not Available</td>
<td>An independent right (outside the provisions in the Personal Data Protection Act 2010), is not available in Malaysia.</td>
</tr>
<tr>
<td>data privacy?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Is there an effective agency (or regulator) tasked with the enforcement</td>
<td>National</td>
<td>In June 2011 it was reported that the Malaysian Ministry of Information, Communication and Culture will establish a government department to facilitate the implementation of Malaysia’s Personal Data Protection Act. A Privacy Commissioner has not yet been appointed.</td>
</tr>
<tr>
<td>of privacy laws?</td>
<td>Commissioner</td>
<td></td>
</tr>
<tr>
<td>7. What is the nature of the privacy regulator?</td>
<td>Sole</td>
<td>There has been some criticism of the legislation’s approach to the appointment and retention of the Commissioner — including criticisms that the position may not be as independent as Commissioners in other jurisdictions.</td>
</tr>
<tr>
<td>regulator?</td>
<td>Commissioner</td>
<td></td>
</tr>
<tr>
<td>8. Are data controllers free from registration requirements?</td>
<td>✔</td>
<td>There are no registration requirements in Malaysian privacy law.</td>
</tr>
<tr>
<td>9. Are cross border transfers free from registration requirements?</td>
<td>✔</td>
<td>Although other rules apply for cross-border transfers, there are no registration requirements in Malaysian privacy law.</td>
</tr>
<tr>
<td>10. Is there a breach notification law?</td>
<td>❔</td>
<td>Malaysia did consider including a data breach notification requirement in its privacy law, but it is not included in the final legislation.</td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Is there a law or regulation that gives electronic signatures clear</td>
<td>✔</td>
<td>Under the Digital Signature Act 1997, digital signatures are to be the equivalent of signatures in the traditional sense. The legal framework of the Act was strengthened to encourage future use, by way of the Digital Signature (Amendment) Act 2001.</td>
</tr>
<tr>
<td>legal weight?</td>
<td></td>
<td>In addition, the Electronic Commerce Act 2006 contains broad (technology neutral) provisions on electronic signatures.</td>
</tr>
</tbody>
</table>
**Q. Malaysia**  | **RESPONSE**  | **EXPLANATORY TEXT**
---|---|---
2. Are ISPs and content service providers free from mandatory filtering or censoring? | ✔ | The Communications and Multimedia Act 1998 established the Malaysian Communications and Multimedia Commission (<www.skmm.gov.my>), which is empowered to regulate the information technology and communications industries. The Act empowers the Commission with broad authority to regulate online speech, providing that ‘no content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.’ Publishers of media content in violation of this provision may face criminal penalties.

The Act also establishes the Content Forum, which formulates and implements the Content Code — voluntary guidelines for content providers concerning the handling of content deemed offensive and indecent.

In practice, the Malaysian Government has pledged not to censor the Internet. There is no evidence of technological Internet filtering in Malaysia. However, state controls on traditional media spill over to the Internet at times, leading to self-censorship and occasional investigation of bloggers and online dissidents.

3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers? | Limited coverage in Legislation | The only relevant legal requirement is the Security principle contained in the Personal Data Protection Act 2010. It states:

Security Principle: A data user shall take practical steps to protect the personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction.

This requirement is very generic and the law recent (2010), so there is no guidance available on more specific security requirements at this stage.

4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers? | None | There are no security audit requirements in Malaysia.

5. Are there security laws and regulations requiring specific certifications for technology products? | Limited requirements | Malaysia is a Certificate Consuming Member of the Common Criteria Recognition Agreement (CCRA) (<http://www.commoncriteriaportal.org>). Certifications have been required in a small number of national flagship projects.

**Cypercrime**

1. Are there cybercrime laws in place? | ✔ | The Computer Crimes Act 1997 prohibits 4 relatively limited categories of activities related to unauthorized entry into computer systems, which are:

- Section 3. Acts committed with intent to secure unauthorized access to programs or data stored in any computer
- Section 4. Acts committed with intent to secure unauthorized access to programs or data stored in any computer
- Section 5. Acts committed with the knowledge that the act will cause unauthorized modification of the contents of any computer
- Section 6. Wrongful communication of any password, code or means of access to a computer to any person who is not authorized to receive the same

Also, under the Act, any person who has in his custody or control any computer program or data which he is not authorized to hold is presumed to have obtained unauthorized access to such program or data. These provisions cover most, but not all cybercrime activity.

2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime? | ✗ | The provisions in the computer Crimes Act 1997 are more aligned with computer crimes, rather than cybercrimes. They do not follow the Convention closely.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?

**Undecided** The Digital Signature Act 1997 gives powers of search and seizure of documents and computerized data to the police or a duly authorized officer where there is reasonable cause to believe that an offence under the Act is being committed. In such an event, they additionally have the right of access and the right to require the production of computerized data. ‘Access’ here includes being provided with the password, encryption and decryption codes, software or hardware necessary for comprehension of the computerized data.

Such powers are normally exercised pursuant to a warrant issued by a magistrate. The police may however search any premises without a warrant if they have reasonable cause to believe that the delay in obtaining such a warrant will adversely affect investigations or is likely to lead to the tampering or destruction of evidence.

Where a subscriber uses a pseudonym, the certification authority is required to transmit data on his identity if so requested by the proper authorities, where this is necessary to prosecute offences or maintain public order.

Apart from the above, various statutes give powers of search and seizure and powers to compel the production of evidence for investigations into offences committed thereunder. Examples of such legislation include the Criminal Procedure Code, the Banking and Financial Institutions Act 1989, Anti-Money Laundering Act 2001 and the Communications and Multimedia Act 1998.

These search, seizure and access powers are to be exercised for the purposes of investigations into offences to which the statutes in question relate, and do not confer any general authority for access to information or the conduct of general searches and seizures.

4. How does the law deal with extraterritorial offenses?

**Comprehensive coverage** Section 9 of the Computer Crimes Act 1997 states that the Act applies, within and outside Malaysia, where the offence in question, the computer, program or data was in Malaysia or capable of being connected to or sent to or used by or with, a computer in Malaysia at the material time.

**INTELLECTUAL PROPERTY RIGHTS**

1. Is the country a member of the TRIPS Agreement?

- Malaysia became a member of the TRIPS Agreement in 1995.

2. Have IP laws been enacted to implement TRIPS?

- Malaysia has implemented the TRIPS agreement in local laws.

3. Is the country party to the WIPO Copyright Treaty?

- Malaysia has not signed the WIPO Copyright Treaty.

4. Have laws implementing the WIPO Copyright Treaty been enacted?

- Malaysian law is partially compliant with key provisions of the Treaty.

5. Are civil sanctions available for unauthorized making available (posting) of copyright holders’ works on the Internet?

- Under Section 13(1)(aa) of the Copyright Act 1987, the copyright owner has the exclusive right to control the communication to the public of a work -
  1. Copyright in a literary, musical or artistic work, a film, a sound recording or a derivative work shall be the exclusive right to control in Malaysia -
     a. the reproduction in any material form;
     b. the communication to the public;

6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders’ works on the Internet?

- Section 41 of the Copyright Act 1987 considers offences, including:
  1. Any person who during the subsistence of copyright in a work or performers’ right
     c. distributes infringing copies;
     d. in the case of an offence under paragraphs (a) to (f) , to a fine not exceeding ten thousand ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offence, to a fine not exceeding twenty thousand ringgit for each infringing copy or to imprisonment for a term not exceeding ten years or to both.

7. Are there laws governing ISP liability for content that infringes copyright?

- There is no specific law covering ISP liability for infringing copyright.

8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?

- There is a small possibility that Section 36(1) of the Copyright Act 1987 could be applied to ISPs if they were made aware that they were hosting infringing copyright, and a court determined that this act ‘caused’ the infringement. However, there is no relevant decision on this issue and it appears to be an unlikely interpretation of the Act.
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<tbody>
<tr>
<td>9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?</td>
<td>Not Applicable</td>
<td></td>
</tr>
<tr>
<td>10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?</td>
<td></td>
<td>There are no copyright take-down requirements in Malaysia.</td>
</tr>
<tr>
<td>11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP’s service to distribute content that infringes copyright?</td>
<td></td>
<td>There are no notification requirements in Malaysia.</td>
</tr>
<tr>
<td>12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?</td>
<td>Comprehensive protection</td>
<td>Malaysia does not have specific laws on misappropriation of cloud computing services. However, Malaysia has a good combination of IP laws and cybercrime laws, complemented by the new Personal Data Protection Act — and these provide a useful layer of protection against most risks to cloud computing.</td>
</tr>
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**INTEROPERABILITY**

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<tbody>
<tr>
<td>1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?</td>
<td>✔</td>
<td>The Standards of Malaysia Act 1996 (Act 549) established Standards Malaysia and sets out some high level rules for standards development. There are no specific rules for ICT, although Malaysia is quite active in this field.</td>
</tr>
<tr>
<td>2. Is there a regulatory body responsible for standards development for the country?</td>
<td>✔</td>
<td>The Department of Standards Malaysia <a href="http://www.standardsmalaysia.gov.my">http://www.standardsmalaysia.gov.my</a> is an agency established by the Ministry of Science, Technology and Innovation. Their role is to develop and promote the use of Malaysian Standards and ensure compliance with international standards.</td>
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**INTERNATIONAL HARMONIZATION OF RULES**

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<tr>
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<tbody>
<tr>
<td>1. Are e-commerce laws in place?</td>
<td>✔</td>
<td>The Electronic Commerce Act 2006 is the key source of electronic commerce regulation for the private sector. It is complemented by the Electronic Government Activities Act 2007, which applies similar rules to the public sector.</td>
</tr>
<tr>
<td>2. What international instruments are the e-commerce laws based on?</td>
<td>UN Convention on E-Contracting</td>
<td>The Electronic Commerce Act 2006 closely mirrors the UN Convention on Electronic Contracting.</td>
</tr>
<tr>
<td>3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?</td>
<td>✔</td>
<td>No tariffs are in place and Malaysia takes active steps to encourage foreign ICT investment and development.</td>
</tr>
<tr>
<td>5. Does the government participate in international standards setting process?</td>
<td>✔</td>
<td>Malaysia participates in relevant ISO and IEC standard setting processes and is a full member of the ISO.</td>
</tr>
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</table>

**PROMOTING FREE TRADE**

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<tbody>
<tr>
<td>1. Are there any laws or policies in place that implement technology neutrality in government?</td>
<td></td>
<td>The Malaysian Government Interoperability Framework (MyGIF) 2003 encourages technology neutrality. MyGIF has been supplemented by the Malaysian Government Interoperability Framework for Open Source Software (MyGIF OSS) 2008 contains information on open source software (OSS), open standards and technical specifications recommended for adoption in Malaysia. It defines the minimum set of open standards and technical specifications governing the use of OSS and information access. <a href="http://www.oscc.org.my/content/view/185/245">http://www.oscc.org.my/content/view/185/245</a></td>
</tr>
<tr>
<td>2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?</td>
<td>✔</td>
<td>There are no mandatory requirements in Malaysia.</td>
</tr>
</tbody>
</table>
### Q MALAYSIA | RESPONSE | EXPLANATORY TEXT
---|---|---
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies? | 1 | The Government of Malaysia encourages the use of Open Source Software (OSS) in the Malaysian Public Sector. The Malaysian Administration Modernisation and Management Planning Unit (MAMPU) of the Prime Minister Department is given the responsibility to implement this OSS Initiative.

4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider? | x | Preferential government procurement policy favors locally owned businesses. International tenders are invited only if goods and services are not available locally. Malaysia is not a member of the WTO plurilateral Agreement on Government Procurement.

### INFRASTRUCTURE, STATISTICS AND INDICATORS

1. Is there a National Broadband Plan? | • By 2011, 50% of households to access high-speed broadband • By 2015, 75% of households to access high-speed broadband. | In October 2004 the Malaysian Cabinet approved the National Broadband Plan. In August 2006, the MyICMS 886 Blueprint was released, detailing a number of broadband targets, including:
• By 2008, 2.8 million high speed broadband subscribers
• By 2010, 10% of high speed broadband to be via optical fiber
• By 2011, 75% of households will have access to broadband. In March 2010, the Prime Minister announced the National Broadband Initiative (NBI) <http://www.skmm.gov.my/index.php?c=public&v=art_view&art_id=36>, combining a number of initiatives, including:
• High-Speed Broadband Project (HSBB) — deployment of a network with speeds greater than 10 Mbps in strategic areas with high economic impact.
• Broadband for General Population (BGPP) — deployment to the general population with speeds up to 2 Mbps (utilizing DSL, WiMAX and 3G).
• The March 2010 announcements resulted in a realigning of earlier targets, including:
  – By 2011, 50% of households to have access to broadband (In January 2011, this target was met, with 55% of households having access to broadband — delivered largely through growth in wireless broadband)
  – By 2015, 75% of households to access high-speed broadband.

2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted? | No Regulation and extensive public debate | There are no specific net neutrality rules in place in Malaysia, although the Ministry has a theoretical power to set tariffs for Internet traffic under the Communications and Multimedia Act (this power has not been used). There has been some discussion of net neutrality in the media in Malaysia, and the relevant Minister was quoted as being in favor of implementing net neutrality principles.

3. Base Indicators


## Country report: Malaysia

### 4. ICT and Network Readiness Indicators

#### 4.1. ITU ICT Development Index (IDI) (2010)
(Score is out of 10 and includes 152 countries)

- **Score**: 4.45
- **Explanation**: Malaysia has an ICT Development Index (IDI) score of 4.45 (out of 10), resulting in a rank of 58 (out of 152 economies). The 2010 IDI for Malaysia has improved from a rank of 57 since 2008.
  

#### 4.2. World Economic Forum Networked Readiness Index (2010–2011)
(Score is out of 7 and includes 138 countries)

- **Score**: 4.74
- **Explanation**: Malaysia has a Networked Readiness Index (NRI) score of 4.74 (out of 7), resulting in an overall rank of 28 (out of 152 economies) and a rank of 1 in the upper-middle income grouping of countries/economies.
  

#### 4.3. International Connectivity Score (2011)
(Score is out of 10 and includes 50 countries)

- **Score**: 6.61
- **Explanation**: Malaysia has a Connectivity Score of 6.61 (out of 10), resulting in a rank of 1 (out of 25) in the Resource-driven grouping of countries/economies.
  
  [Nokia Siemens, Connectivity Scorecard (2011) <http://www.connectivityscorecard.org>]

#### 4.4. IT Industry Competitiveness Index (2011)
(Score is out of 100 and includes 66 countries)

- **Score**: 44.10
- **Explanation**: Malaysia has an IT Industry Competitiveness Index Score of 44.1 (out of 100), resulting in a rank of 31 (out of 66 countries/economies included in the index). The 2011 index score is a 33.2% increase on the 2009 score. Malaysia has moved up the ranking by 11 places since 2009.
  
  [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) <http://globalindex11.bsa.org>]

### 5. Internet Users and International Bandwidth

#### 5.1. Internet Users (2010)

- **Number**: 15,705,762
- **Calculation**: [calculated from 8.3.1. and 8.5.2.]

#### 5.2. Internet Users as Percentage of Population (2010)

- **Percentage**: 55%
- **Calculation**: In 2010, 55.3% of the population in Malaysia used the Internet. This is a -0.9% decrease since 2008.
  

#### 5.3. International Internet Bandwidth (bits per second per internet user) (2010)

- **Bandwidth**: 11,652
- **Calculation**: Malaysia has increased its International Internet Bandwidth (per Internet user) by 179% since 2008.
  

#### 5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)

- **Bandwidth**: 183
- **Calculation**: [calculated from 8.5.3 and 8.5.1]

### 6. Fixed Broadband


- **Subscriptions**: 2,078,500
- **Calculation**: [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]

#### 6.2. Fixed Broadband Subscriptions as % of households (2010)

- **Percentage**: 36%
- **Calculation**: Note: this is skewed by business usage (refer to OECD comments about this)
  
  [calculated from 8.3.3. and 8.6.1.]

#### 6.3. Fixed Broadband Subscriptions as % of population (2010)

- **Percentage**: 7%
- **Calculation**: Malaysia has increased its Fixed Broadband Subscriptions (as a % of the population) by 52% since 2008.
  

#### 6.4. Fixed Broadband Subscriptions as % of Internet users (2010)

- **Percentage**: 13%
- **Calculation**: [calculated from 8.5.1 and 8.6.1]
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<tr>
<td>7. Mobile Broadband</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.1. Mobile Cellular Subscriptions (2010)</td>
<td>34,456,000</td>
<td>Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc). [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) <a href="http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx">http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx</a>]</td>
</tr>
<tr>
<td>7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)</td>
<td>27%</td>
<td>Malaysia has increased the number of Active Mobile-Broadband Subscriptions (as a % of the population) by 209% since 2008.</td>
</tr>
</tbody>
</table>