

COUNTRY: MALAYSIA

SCORE: 69.52 | RANK: 13/24

Malaysia has modern electronic signature laws and electronic commerce laws, and it introduced new privacy laws in 2010 (which came into force on January 1, 2013). These measures provide a strong level of protection for the digital economy and cloud computing in Malaysia.

In 2012, Malaysia updated and strengthened its copyright laws in accordance with international standards and signed the WIPO Copyright Treaty. This significant development resulted in a large increase of Malaysia's score in the 2013 scorecard.

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

Malaysia made the biggest jump in the Scorecard scale — picking up more than 10 points for its policy and infrastructure improvements. Malaysia's overall ranking remains unchanged at 13th, but with its increased score the country crosses the sharp divide between advanced economies and countries that continue to develop their cloud policy frameworks.

Q MALAYSIA	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use, or other processing of personal information?	✓	The Personal Data Protection Act 2010 covers only the private sector. After a long delay, the law came into full force on January 1, 2013.
2. What is the scope and coverage of privacy law?	Sectoral	The Personal Data Protection Act 2010 covers only the private sector; government agencies are exempt.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	ⓘ	The Personal Data Protection Act 2010 is very similar to the principles in the EU Directive, with some variations that appear to adopt parts of the APEC Privacy framework. However, the law does not contain any EU-style registration requirements. The law does not cover the government sector.
4. Is the privacy law compatible with the Privacy Principles in the APEC Privacy Framework?	✓	Malaysia is a member of APEC. The Personal Data Protection Act 2010 is very similar to the principles in the EU Directive, with some variations that appear to adopt parts of the APEC Privacy Framework.
5. Is an independent private right of action available for breaches of data privacy?	Not available	An independent right (outside the provisions in the Personal Data Protection Act 2010) is not available in Malaysia.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	National regulator	A Personal Data Protection Department has been established to administer the law. It is not a completely independent regulator.
7. What is the nature of the privacy regulator?	Other government Official	The regulator is a government department and may not be as independent as commissioners in other jurisdictions.
8. Are data controllers free from registration requirements?	✓	There are no registration requirements in Malaysian privacy law.
9. Are cross-border transfers free from registration requirements?	✓	Although other rules apply for cross-border transfers, there are no registration requirements in Malaysian privacy law.
10. Is there a breach notification law?	✗	Malaysia considered including a data breach notification requirement in its privacy law, but it is not included in the final legislation.
SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✓	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. In addition, the Electronic Commerce Act 2006 contains broad (technology-neutral) provisions on electronic signatures.

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2. Are ISPs and content service providers free from mandatory filtering or censoring?	✔	<p>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 law 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.</p> <p>The law 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.</p> <p>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.</p>
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in legislation	<p>The only relevant legal requirement is the security principle contained in the Personal Data Protection Act 2010. It states:</p> <p style="padding-left: 20px;">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.</p> <p>This requirement is very generic and the law is recent, so there is no guidance available at this stage on more specific security requirements.</p>
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) < www.commoncriteriaportal.org >. Certifications have been required in a small number of national flagship projects.
CYBERCRIME		
1. Are cybercrime laws in place?	✔	<p>The Computer Crimes Act 1997 prohibits four relatively limited categories of activities related to unauthorized entry into computer systems, which are:</p> <ul style="list-style-type: none"> • 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 <p>Also, 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.</p> <p>These provisions cover most, but not all cybercrime activity.</p>
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 than cybercrimes. They do not follow the Convention closely. However, provisions contained in e-commerce laws and copyright laws (updated and amended in 2012) complement Malaysia's cybercrime legislation and make it more compatible with international standards.

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3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers, or other service providers?	Undecided	<p>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 offense under the Digital Signature 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.</p> <p>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.</p> <p>When a subscriber uses a pseudonym, the certification authority is required to transmit data on the subscriber's identity if so requested by the proper authorities, where this is necessary to prosecute offenses or maintain public order.</p> <p>Apart from the above, various statutes give powers of search and seizure and powers to compel the production of evidence for investigations into offenses 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.</p> <p>These search, seizure, and access powers are to be exercised for the purposes of investigations into offenses 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.</p>
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Section 9 of the Computer Crimes Act 1997 states that the law applies, within and outside Malaysia, where the offense in question, the computer, program, or data were 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 joined the WIPO Copyright Treaty in September 2012.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	✓	Malaysian law was updated by the Copyright (Amendment) Act 2012 and is now 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.
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 offenses, including: <ul style="list-style-type: none"> (1) Any person who during the subsistence of copyright in a work or performers' right <ul style="list-style-type: none"> (c) distributes infringing copies; <ul style="list-style-type: none"> (i) in the case of an offense under paragraphs (a) to (f), to a fine not exceeding 10,000 ringgit for each infringing copy, or to imprisonment for a term not exceeding five years or to both and for any subsequent offense, to a fine not exceeding 20,000 ringgit for each infringing copy or to imprisonment for a term not exceeding 10 years or to both.
7. Are there laws governing ISP liability for content that infringes copyright?	✓	The Copyright (Amendment) Act 2012 establishes a comprehensive scheme relating to 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?	✓	The Copyright (Amendment) Act 2012 sets out the situations in which an ISP might be liable, as well as the requirements for them to avoid liability.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil	The Copyright (Amendment) Act 2012 includes civil sanctions.

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10. Must ISPs take down content that infringes copyright, upon notification by the right holder?	✓	The Copyright (Amendment) Act 2012 sets out a fairly basic set of copyright take-down requirements, based on a notice (and counter-notice) system. The system is very new and is yet to be tested in practice. It has been the subject of some criticism as there may be the potential for disputes arising from the complex counter-notice system.
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?	ⓘ	The Copyright (Amendment) Act 2012 includes some basic notice requirements.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Comprehensive protection	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 Personal Data Protection Act 2010, and these provide a useful layer of protection against most risks to cloud computing. The recent Copyright (Amendment) Act 2012 strengthens IP protection and clarifies ISP liability in a way that should help cloud service providers.
SUPPORT FOR INDUSTRY-LED STANDARDS & INTERNATIONAL HARMONIZATION OF RULES		
1. Are there laws, regulations or policies that establish a standards-setting framework for interoperability and portability of data?	✓	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.
2. Is there a regulatory body responsible for standards development for the country?	✓	The Department of Standards Malaysia < www.standardsmalaysia.gov.my > is an agency established by the Ministry of Science, Technology and Innovation. Its role is to develop and promote the use of Malaysian standards and ensure compliance with international standards.
3. Are e-commerce laws in place?	✓	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.
4. What international instruments are the e-commerce laws based on?	UN Convention on E-Contracting	The Electronic Commerce Act 2006 closely resembles the UN Convention on Electronic Contracting. This Convention comes into force in March 2013.
5. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✓	No tariffs are in place, and Malaysia takes active steps to encourage foreign ICT investment and development.
6. Are international standards favored over domestic standards?	✓	Malaysia prioritizes compliance with international standards.
7. Does the government participate in international standards-setting process?	✓	Malaysia participates in relevant ISO and IEC standard-setting processes and is a full member of the ISO.
PROMOTING FREE TRADE		
1. Are any laws or policies in place that implement technology neutrality in government?	ⓘ	The Malaysian Government Interoperability Framework (MyGIF) 2003 encourages technology neutrality. MyGIF has been supplemented by the Malaysian Government Interoperability Framework for Open Source Software (MyGIFOSS) 2008, which 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. < www.oscc.org.my/content/view/full/185/245 >
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?	✓	There are no mandatory requirements in Malaysia.

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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?	●	The government of Malaysia encourages the use of OSS in the Malaysian public sector. The Malaysian Administration Modernization 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?	●	Preferential government procurement policy favors locally owned businesses in some sectors. International tenders are sometimes invited if goods and services are not available locally. In an encouraging development, Malaysia became an observer to the WTO plurilateral Agreement on Government Procurement in July 2012.
ICT READINESS, BROADBAND DEPLOYMENT		
1. Is there a national broadband plan?	<ul style="list-style-type: none"> By 2015, 75% of households to access high-speed broadband 	<p>In 2010, the prime minister announced the National Broadband Initiative (NBI) <www.skmm.gov.my/index.php?c=public&v=art_view&art_id=36>, combining a number of initiatives, including:</p> <ul style="list-style-type: none"> 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) <p>The March 2010 announcements resulted in a realigning of earlier targets, including:</p> <ul style="list-style-type: none"> By 2011, 50% of households to have access to broadband (this target was met in January 2011, 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 <p><www1.skmm.gov.my/Sectors/Broadband/National-Broadband-Initiative.aspx></p>
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 of Information Communications and Culture < www.kpkk.gov.my > has a theoretical power to set tariffs for Internet traffic under the Communications and Multimedia Act (this power has not been used).
3. Base Indicators		
3.1. Population (2011)	28,859,154	In 2011, the population of Malaysia increased by 1.6%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >]
3.2. Urban Population (%) (2011)	73%	[United Nations, Department of Economic and Social Affairs, Population Division (2012). World Urbanization Prospects: The 2011 Revision, < esa.un.org/unup/CD-ROM/Urban-Rural-Population.htm >]
3.3. Number of Households (2011)	6,039,000	In 2011, the number of households in Malaysia increased by 3.9%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >]
3.4. Population Density (people per square km) (2010)	86	[World Bank, Data Catalog, Indicators, Population Density (2012) < data.worldbank.org/indicator/EN.POP.DNST >]
3.5. Per Capita GDP (US\$ 2011)	\$9,656	In 2011, the per capita GDP for Malaysia increased by 5.1% to US\$9,656. [World Bank, Data Catalog, Indicators: GDP per capita, current US\$ (2012) < data.worldbank.org/indicator/NY.GDP.PCAP.CD > and GDP growth, annual % (2012) < data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG >]
3.6. Public Cloud Services Market Value (2011) (Billions of US\$)	—	Malaysia is not included in this Gartner forecast. [Gartner, Forecast Overview: Public Cloud Services, Worldwide, 2011-2016 (August 2012 Update) < www.gartner.com/id=2126916 >]
3.7. Personal Computers (% of households) (2011)	64%	In 2011, 64.1% of households in Malaysia had personal computers. This is a 3.7% increase since 2010 and ranks Malaysia 48 out of 182 countries surveyed. The growth from 2010 is below the five-year compound annual growth rate (CAGR) from 2006 to 2011 of 17.8%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may update this indicator for prior years.

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4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2011) (Score is out of 10)	4.82	Malaysia's ITU ICT Development Index (IDI) for 2011 is 4.82 (out of 10), resulting in a rank of 58 (out of 161 economies). The 2011 IDI for Malaysia has increased by 4.1%, and the IDI ranking has declined by one place from a rank of 57 since 2010. [International Telecommunication Union (ITU), Measuring the Information Society (2012) < www.itu.int/ITU-D/ict/publications/idi/2012 >] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
4.2. World Economic Forum Networked Readiness Index (NRI) (2012) (Score is out of 7)	5.08	Malaysia has a Networked Readiness Index (NRI) score of 5.08 (out of 7), resulting in a rank of 21 (out of 142 economies) and a rank of 1 (out of 39) in the upper-middle income grouping of economies. The 2012 NRI for Malaysia has increased by 7.3% and improved from a rank of 28 since 2011. [World Economic Forum, Global Information Technology Report (2012) < www.networkedreadiness.com/gitr >]
4.3. International Connectivity Score (2011) (Score is out of 10)	6.61	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) < www.connectivityscorecard.org >]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100)	44.10	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) < globalindex11.bsa.org >]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2011)	17,604,084	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as % of Population (2011)	61%	In 2011, 61% of the population in Malaysia used the Internet, resulting in a ranking of 52 out of 199 countries surveyed. This is an 8.3% increase since 2010. The growth from 2010 is above the five-year CAGR from 2006 to 2011 of 3.4%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (December 2012) < www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >] Note: There may be some variations as to how countries calculate this. Some countries base this upon all or part of the population, such as between 16 and 72 years of age. Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and for prior years.
5.3. International Internet Bandwidth (bits per second per Internet user) (2011)	10,651	Malaysia's International Internet Bandwidth (per Internet user) has decreased by 7% since 2010. [International Telecommunication Union (ITU), Measuring the Information Society (2012) < www.itu.int/ITU-D/ict/publications/idi/2012 >]
5.4. International Internet Bandwidth (2011) (total gigabits per second [Gbps] per country)	188	Malaysia has increased its International Internet Bandwidth by 2% since 2010 to 188 Gbps and is ranked 46 out of 188 countries surveyed. The growth from 2010 is below the five-year CAGR from 2006 to 2011 of 62.9%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2011)	2,147,800	Malaysia has increased the number of fixed broadband subscribers by 16% since 2010, to 2,147,800, and is ranked 34 out of 182 countries surveyed. The growth from 2010 is below the five-year CAGR from 2006 to 2011 of 23.4%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and for prior years.
6.2. Fixed Broadband Subscriptions as % of Households (2011)	36%	[calculated from 8.3.3. and 8.6.1.] Note: This may be skewed by business usage in some countries (refer to OECD comments about this).

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6.3. Fixed Broadband Subscriptions as % of Population (2011)	7%	Malaysia has increased its fixed broadband subscriptions (as a share of the population) by 14% since 2010, which is below the five-year CAGR from 2006 to 2011 of 21.4%. This ranks Malaysia 34 out of 187 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (July 2011) < www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
6.4. Fixed Broadband Subscriptions as % of Internet Users (2011)	12%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2011)	36,661,261	In 2011, Malaysia increased the number of mobile cellular subscriptions by 8.3% and is ranked 30 out of 195 countries surveyed. The number of subscriptions account for 127% of the population. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >] 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 and tablets).
7.2. Active Mobile Broadband Subscriptions per 100 inhabitants (2011)	12	Malaysia has increased the number of active mobile broadband subscriptions (as a % of the population) by 21% since 2010. This ranks Malaysia 76 out of 144 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >] Note: This refers to the sum of standard mobile broadband and dedicated mobile broadband subscriptions to the public Internet. It covers actual subscribers, not potential subscribers, even though the latter may have broadband enabled-handsets. Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
7.3. Number of Active Mobile Broadband Subscriptions (2011)	3,539,100	In 2011, Malaysia increased the number of active mobile broadband subscriptions by 23% and is ranked 76 out of 145 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) < www.itu.int/ITU-D/ict/publications/world/world.html >]