

Review of Electronic Transactions Act: ETA Remaining Issues

Views and Comments from Prof Ang Peng Hwa, Nanyang Technological University in relation to the above subject matter as follow:

1. S. 10 is both too wide and too narrow.
2. S. 10 is too wide because it immunises both civil and criminal offences. Because criminal offences are, by definition, more socially harmful, it may be wise to relook at this immunisation with a view to reducing the immunity. For example, some action may be needed by the party to be immunised in order for immunity to be granted.
3. S. 10 is too narrow because it focuses only on "network service providers". But as we now know, there are many situations where it is practically impossible for other kinds of service providers to act against illegal or harmful content simply because of the volume of the content and transactions. However, in many such cases, it is not theoretically impossible if they are given notice. An example would be eBay where it would be unrealistic for them to monitor the transactions but if one particular transaction is pointed out, it would be possible for the eBay to act against it.
4. The immunity should be earned in cases where it is possible for the service provider to act. This is to avoid cases, as in the US, where egregious harm is done to the complainant but nothing can be done to set that right because the law completely immunises the service provider.

Recommendations:

1. Narrow/Limit the immunity for criminal cases.
2. Widen the scope of coverage to include "intermediaries"-anyone who does not handle the content directly but merely allows the content to be hosted, posted or transacted.
3. Immunity should be earned, where it can be earned. Intermediaries should be immunised only when it has acted reasonably (say within 5 days) upon notice against the parties complained against.