

MENTERI TENAGA, KOMUNIKASI DAN MULTIMEDIA, MALAYSIA
MINISTER OF ENERGY, COMMUNICATIONS AND MULTIMEDIA

COMMUNICATIONS AND MULTIMEDIA ACT 1998

**MINISTERIAL DETERMINATION ON THE GUIDELINES ON INCIDENTAL
CONTENT APPLICATIONS SERVICE**

DETERMINATION No. 5 of 2003

IN exercise of the powers conferred by section 10 and subsection 208(2) of the Communications and Multimedia Act 1998 [the Act], the Minister makes the following determination:

CITATION AND COMMENCEMENT

1. This determination may be cited as "Ministerial Determination On The Guidelines On Incidental Content 2003" and shall come into operation on the date of registration of this Determination.

OBJECTIVES

2. This determination clarifies the meaning of "content incidental to the service provided" ("incidental content") for the purposes of administering the Act.

INTERPRETATION

3. Unless the context otherwise requires any term used in this determination shall have the same meaning as that contained in the Act, including subsidiary legislation and statutory instruments made under it.

INCIDENTAL CONTENT APPLICATIONS SERVICES

Services which provide "incidental content"

4. This category refers to services that provide content in a manner that is entirely incidental to the service provided. An example is the graphical interface used in a service to provide financial information. While the substance of the message would not normally be incidental for the purposes of Part IX of the Act, graphical "buttons" and other interface devices which are solely used to access the service could be regarded as incidental to the service provided. Other examples include text messages such as a caller line

identification read-out in the case of telephony, or a touch-screen interface in a public information kiosk. Incidental content is thus content that is entirely subordinate to the primary purpose of a service or communication.

Illustrative content, including visual or audio-visual representations used to support a service or product for the purpose of an electronic transaction could be categorized as incidental content since the purpose of the communications is the achievement of an electronic transaction rather than the transmission of content.

The criteria for "incidental content"

5. Incidental content is content that is :-
- (a) an integral component of a user interface to an applications service; and
 - (b) is not an integral component of the primary purpose of the communications provided by the applications service.

The latter test is satisfied in a scenario where the content is ancillary to, and supportive of, an electronic transaction.

If the division between the content and the primary purpose of the service or communication is unclear, it is not possible to satisfy both criteria. Thus a stand-alone advertisement for a product or service would not be incidental content. However, graphical navigation aids and illustrative or explanatory content material about a product or service within an electronic commerce transaction service context, where the primary purpose is the completion of a transaction independent of the associated content, would be incidental content.

ILLUSTRATION

6. Applying the above criterion to the example of graphics that are part of an interface to a financial transaction service, the definition of incidental content would be satisfied because:-

- (a) the graphics are an integral part of the user interface to a financial applications service; and
- (b) the graphics are not the primary purpose of the communications (which consists of an electronic financial transaction).

Images, illustrations and text used in online management systems such as supply chain management, enterprise resource management systems, that involve the transmission of content could be incidental content since the content is an integral component of the management system and is not the primary purpose of the communications.

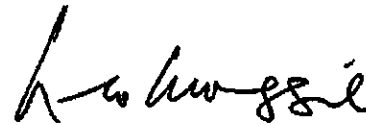
Images and text used to support a tele-health service could be incidental content as the images and text form an integral part of the service but at the same time are not the primary purpose of the service, the primary purpose being a decision or advice regarding some health issue.

AMENDMENTS

7. This determination may be amended from time to time in accordance with the provisions of the Act.

Made: 17 July 2003

[KTKM(S) 110/186/2-19 (16)]



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