

## **Gatekeepers Liability for Internet Intermediaries in Malaysia: Way Forward**

### **ABSTRACT**

The advent of the Internet has changed how information and content were created, accessed, used, and distributed digitally. The Internet provides diverse opportunities for subscribers, users, private or business operators, and the public at large to enjoy fast and cheap global distribution and sharing of information, knowledge, and entertainment. Internet intermediaries have primarily remained the gateway through which internet users can access and enjoy the vast flow of data, digital information, as well as content in cyberspace. Unfortunately, these internet intermediaries are at the receiving end of many legal disputes involving violations of intellectual property rights, in particular copyright infringements all over the world. Being the 'gatekeeper' to the Internet and web-based services, the internet intermediaries were arguably best placed to block and remove infringed contents. The imposition of liability to internet intermediaries under the 'gatekeeper' rationale is to identify that the intermediaries are capable of detecting the misconduct and sanction the misconduct. The question is, to what extend? In 1998, a safe harbour was created for internet intermediaries by the U.S. Digital Millennium Copyright Act (DMCA), provided that they complied with the obligatory duty to take down the infringing materials once they received the notice of takedown request. This approach has been followed worldwide, including Malaysia, where the internet intermediaries are bound by the Malaysian Copyright Amendment Act 2012 and the Malaysian Content Code to take down or block access to infringing content to avoid liability. Using doctrinal legal research, this paper analyses the applicability of the gatekeepers' liability for internet intermediaries in Malaysia. It examines the arguments placed forward for the liability of such intermediaries for infringing third-party content. The paper ends with a brief comparison of notice and takedown procedures practised in the US and Malaysia before concluding with some suggestions on the way forward.