

A BILL

*i n t i t u l e d*

An Act to amend the Evidence Act 1950.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Evidence (Amendment) (No. 2) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 3**

**2.** The Evidence Act 1950 [*Act 56*], which is referred to as the “principal Act” in this Act, is amended in section 3 by substituting for the definition of “computer” the following definition:

‘ “computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, storage and display functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include an automated typewriter or typesetter, or a portable hand held calculator or other similar device which is non-programmable or which does not contain any data storage facility;’.

**New section 114A**

3. The principal Act is amended by inserting after section 114 the following section:

**“Presumption of fact in publication**

**114A.** (1) A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved.

(2) A person who is registered with a network service provider as a subscriber of a network service on which any publication originates from is presumed to be the person who published or re-published the publication unless the contrary is proved.

(3) Any person who has in his custody or control any computer on which any publication originates from is presumed to have published or re-published the content of the publication unless the contrary is proved.

(4) For the purpose of this section—

(a) “network service” and “network service provider” have the meaning assigned to them in section 6 of the Communications and Multimedia Act 1998 [Act 588]; and

(b) “publication” means a statement or a representation, whether in written, printed, pictorial, film, graphical, acoustic or other form displayed on the screen of a computer.”.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Evidence Act 1950 (“Act 56”).

2. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 3 of Act 56 to streamline the definition of “computer” with the definition of “computer” in the Computer Crimes Act 1997.

4. *Clause 3* seeks to introduce a new section 114A into Act 56 to provide for the presumption of fact in publication in order to facilitate the identification and proving of the identity of an anonymous person involved in publication through the internet.

*FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U<sup>2</sup>)2799]