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## **PREAMBLE**

WHEREAS, to create and promote a Bhutanese information society and the right environment for the vibrant growth of ICT and Media sectors in the country;

WHEREAS, to ensure technology neutrality, convergence, innovation, private sector participation and competition in the development of the ICT and Media sectors;

WHEREAS, to ensure quality, diversity, speed and choice of ICT and media services, so that the country benefits from the opportunities presented by new developments in the sectors;

WHEREAS, to strengthen the capacity of the Regulatory Authority to effectively regulate the ICT and media sectors;

WHEREAS, to realign and ensure clearer responsibilities of the Government and the regulatory body;

*The Parliament of the Kingdom of Bhutan do hereby enact the Information, Communication and Media Bill of Bhutan 2016 on the ....Day of the ....Month of.....Year of the Bhutanese Calendar corresponding to the... Day of...Month...year....at its.....session of the...Parliament as follows:*

## **CHAPTER ONE: PRELIMINARY**

### **Short title, extent and commencement**

1. This Act shall:
  - (1) Be called the Bhutan Information, Communications and Media Act of Bhutan 2016;
  - (2) Come into force on the.....Day of the....month of the ....of the Bhutanese Calendar corresponding to.....Day of the.....Month of 2015; and
  - (3) Extend to the whole of Kingdom of Bhutan

### **Repeal**

2. This Act shall repeal the Bhutan Information Communication Media Act 2006, and sections 476 and 477 of the Penal Code of Bhutan, 2004.

### **Extra-territorial application**

3. This Act shall apply to offences committed outside Bhutan if the offence involves a computer system or network located in Bhutan.

### **Transitional Clause**

4. This Act shall become effective six months from the date of adoption under section 1(2) of this Act until which all existing Regulations and Rules shall continue to be effective and valid.

### **Scope and Application**

5. This Act shall apply to:
  - (1) ICT and Media Sectors; and
  - (2) The providers and users of the ICT and Media services and facilities.

## **CHAPTER TWO: RESPONSIBILITIES AND FUNCTIONS OF THE MINISTRY**

### **Functions of the Ministry**

6. The Ministry shall:
  - (1) Develop and promote ICT and Media sectors in Bhutan;
  - (2) Direct, coordinate, advice and support the public and private sectors on ICT and Media related matters;
  - (3) Formulate legislation, policies, and plans;
  - (4) Develop an open and transparent licensing policy and criteria;
  - (5) Formulate policy for the assignment of rights to the spectrum including mechanisms for rate-based assignment;
  - (6) Formulate codes and technical standards and norms in collaboration with relevant agencies;
  - (7) Prescribe appropriate standards for ICT apparatus including radio communication apparatus in consultation with the relevant authority;
  - (8) Approve Rules and Regulations to implement various provisions of this Act including policy guidelines on tariff and rates;
  - (9) Issue directions to the Authority on the exercise of the Authority's powers and the performance of its functions and duties under this Act.
7. The Minister may, delegate the performance of all or any of the functions under section 6 of this Act to the Authority.
8. The Ministry in consultation with the Authority, may exempt the:
  - (1) License requirement for certain types of ICT apparatus; and

- (2) License requirements for the use of those ICT apparatus under certain circumstances such as widening consumer choices, improvement in the services, increasing the coverage of services, etc.

### **Advisory bodies**

9. The Minister may, constitute ad-hoc ICT and Media Advisory bodies to advise the Ministry on all aspects of ICT and Media Sector or delegate specific responsibilities as necessary upon approval of the Cabinet.
10. The Advisory bodies established under section 9 of this Act shall function in accordance with the terms of reference approved by the Minister.
11. The members of ICT and Media Advisory bodies shall be paid such remuneration as specified under the terms of reference.

### **Directives in the interest of national security and international relations**

12. If it appears to the Minister to be necessary to do so in the interest of the sovereignty, security, unity and integrity of Bhutan, or the interest of friendly relations with foreign States, the Minister may issue a directive requiring a person to do or abstain from doing an act pertaining to ICT and Media facility or services.
13. A person to whom directive is issued under section 12 of this Act shall execute the directives notwithstanding any rights conferred by or under this Act.
14. In the event of a person failing to comply with the directive under section 12 of this Act, the Authority may revoke the license or permit and may impose fine as may be prescribed in the Rules and Regulations.
15. The Minister shall present to the Cabinet a copy of every directive issued, as soon as practicable, but no later than ten days after the date on which the directive was issued under section 12 of this Act.
16. The Ministry shall, based on the prevailing market rates or other acceptable methods, pay compensation to ICT and Media facility or service provider under section 12 of this Act.

### **Taking over temporary control of ICT or Media facilities or services**

17. The Ministry may, on approval or ratification by the Cabinet, take over the control and management of any ICT or Media facility or services including applications services and/or content applications services or suspend its operation, or entrust any agency of the Government to manage it, during:

- (1) an emergency under which the sovereignty, security, or territorial integrity of Bhutan or any part thereof is threatened by an act of external aggression or armed rebellion; or
  - (2) a natural or man-made disaster which causes, or threatens to cause loss of life or destruction to property.
18. The temporary control and management under section 17 of this Act shall not exceed thirty days after the revocation of emergency or disaster in accordance with the relevant laws.
19. The Ministry may, on the orders of the Cabinet, direct a licensee to stop transmission of certain news or information in the public interest.
20. In the event of the Ministry issuing directives under sections 17 and 19 of this Act, the licensee shall be provided with an opportunity to make representation against the order and the Minister shall review such representation.
21. The Ministry shall return the control and management of the ICT and Media facility or service including other services to the person from whom it had been taken over, as far as possible in the same condition in which it had been taken over as soon as the purpose of the takeover is accomplished.
22. The Ministry may, during a threatening disaster situation, disaster or an emergency, or in the event of wide spread public disorder, direct any licensee to transmit in its ICT and Media service specific announcements, free of charge and in such a manner as may be considered necessary, in the public interest.
23. The person from whom an ICT or Media facility or service has been taken over under section 17 of this Act shall be entitled to reasonable compensation for any direct damage, loss or injury suffered as a result of the takeover.
24. The amount of compensation under section 23 of this Act shall be determined by the Minister within three months from the date on which the control and management of the ICT and Media facility or service including other services is returned.
25. An owner or operator of an ICT or Media facility or service who fails to comply with an order under sections 17 and 19 of this Act shall be deemed to have breached a condition of license and may result in the revocation of the license.

### **Directives**

26. The Ministry may issue directives to the Authority, Media Council, Film Commission, e-Government Governance Council or other relevant bodies for implementation based on ICT and Media policies or other relevant legal documents pertaining to ICT and Media, as the case may be.
27. A directive issued under section 26 of this Act shall be submitted to the Cabinet for information, *if* required.
28. The Authority, Media Council, Film Commission, e-Government Governance Council or relevant bodies may, in writing, request the Minister to review any directive issued under section 26 of this Act within a week after the directive was issued, and the Ministry shall respond in writing confirming or altering the earlier directive.

### **Reports from the Authority and other relevant bodies**

29. The Ministry may require the Authority and other bodies constituted under this Act including the providers of ICT and media services, to provide, within a reasonable time, information, statistical data and reports on specific matters falling within this Act, and they shall respond to such requests.

## **CHAPTER THREE: BHUTAN INFOCOMM AND MEDIA AUTHORITY**

### **Establishment of the Authority**

30. There shall be a regulatory authority called the Bhutan InfoComm and Media Authority to carry out responsibilities entrusted under this Act.
31. The Authority, served by a Secretariat shall be vested with the decision-making and oversight responsibilities of the Authority, and the Authority shall comprise of:
  - (1) A Chairperson;
  - (2) Three civil servants; and
  - (3) One member representing the private sector;
32. A person shall be qualified for appointment as a Member of the Authority, if the person:
  - (1) Is a citizen of Bhutan;
  - (2) Possess a formal university degree in the field of information and communications technology, telecommunications, media, law, finance, public policy or administration; and
  - (3) Has at least ten years of work experience.

33. The Chairperson shall be a senior civil servant, appointed by the Cabinet upon recommendation of the Ministry.
34. The three Members under section 31 (2) of this Act shall be appointed by the Minister, upon approval of the Cabinet, from a list of names recommended by the Ministry.
35. The Member under section 31 (3) of this Act shall be appointed by the Minister upon receipt of nomination from an organisation representing the Media sector or ICT sector.
36. The appointing authority under sections 33, 34 and 35 of this Act, before appointing a person as a Member shall, ensure that the nominee does not have any financial or other interests which are likely to affect the capacity to function as a Member or is not under any legal incapacity.
37. The Chairperson and the Members of the Authority shall be appointed as non-executive members for a period of three years.
38. The Chairperson and Members of the Authority under section 37 of this Act may be eligible for re-appointment for a maximum of one additional term.

#### **Resignation of Chairperson and Members**

39. The Chairperson of the Authority may at any time resign from office by giving notice in writing to the Cabinet, while a Member of the Authority may at any time resign from office by giving notice in writing to the Minister.
40. The resignation shall take effect from the date of acceptance of the notice to resign.

#### **Removal**

41. The Chairperson or a Member of the Authority shall be removed from the membership, if he or she has:
  - (1) Been adjudged insolvent;
  - (2) Become physically or mentally incapable of acting as a member;
  - (3) Been convicted of any offence that involves moral turpitude;
  - (4) Acquired financial or other interest as is likely to present a conflict of interest with the capacity to function as a Member; or
  - (5) Abused the position so as to render continuance in office prejudicial to the public interest.
42. A Chairperson or a Member of the Authority shall not be removed from office under section 41 (4) and (5) of this Act, unless the Member has been given a reasonable opportunity of being heard on the matter.

#### **Vacancy**

43. If the post of a Chairperson or Member of the Authority becomes vacant, it shall be filled as soon as practicable.



44. In the event of the said post remaining vacant due to removal, death or other reasons under section 41 of this Act, the Minister shall appoint the interim chairperson from the members of the Authority.
45. Where fresh appointments are due to be made as a result of any of the existing Members reaching the end of their term, the Minister shall take necessary steps to ensure that new Members are identified at least three months in advance of the date on which the existing Members of the Authority will cease to hold office or that suitable actions are taken to renew the term in accordance with sections 37 and 38 of this Act.
46. A newly appointed Member of the Authority shall assume office immediately after the term of office of the outgoing Member comes to an end.
47. The sitting fees and other allowances payable to the Chairperson and the Members of the Authority shall be as approved by the Ministry of Finance.

#### **Autonomy of the Authority**

48. In discharging its functions and enforcing its authority under this Act, the Authority shall:
  - (1) Exercise complete regulatory independence and not receive instructions relating to the exercise of its functions from any Government official or public or private entity, provided that the Authority shall participate in discussions, consultations and collaborate with the government agencies on issues affecting the ICT and media sectors as and when required to do so;
  - (2) Determine its staffing and recruitment plan for consideration by the Royal Civil Service Commission; and
  - (3) Exercise its powers and performance of its functions to achieve the objectives of this Act.
49. The Government or any public or private entity, except as expressly entitled otherwise under this Act, shall refrain from intervening, and from attempting to unduly influence, directly or indirectly, any process or decision of the Authority.

#### **Meetings of the Authority**

50. The Authority shall meet at least four times in a year at such time, and place as prescribed in the Rules and Regulations to be adopted by the Authority, and optimize every such meeting by consolidating the agenda items.
51. The Member Secretary shall, upon confirmation of the meeting by the Chairperson, give a written notice to other Members at least ten working days prior to the date of such meeting.
52. The Chairperson may waive such requirement under section 50 on urgent matters.
53. The quorum for Board meetings shall be a simple majority of the total membership.

### **The Secretariat to the Authority**

54. There shall be a permanent Secretariat to the Authority headed by a Director/Director General.
55. The Director/Director General in consultation with the Royal Civil Service Commission and in accordance with the Bhutan Civil Service Rules and Regulations may appoint, hire or dismiss such employees as necessary for the efficient and professional performance of all the functions and responsibilities of the Authority, and further ensure sufficient number as well as a good balance of professionals appropriately qualified and experienced in administration, economics, legal and technical fields.
56. The Director/Director General of the Authority shall be appointed by the Royal Civil Service Commission.
57. The Director/Director General shall be the legal representative of the Authority, vested with powers of general superintendence and direction in the conduct of the affairs of the Secretariat, and shall, among others:
  - (1) Serve as the Member Secretary of the Authority with voting rights;
  - (2) Maintain and preserve documents including records of meetings of the Authority;
  - (3) Execute resolutions of the Authority;
  - (4) Organise administrative activities of the Authority;
  - (5) Be responsible for day to day functioning of the Secretariat;
  - (6) Guide, supervise and advise the employees of the Secretariat at all levels;
  - (7) Exercise powers and perform functions assigned under this Act; and
  - (8) Carry out such functions as the Authority may assign.

### **Financing of the Authority**

58. All activities of the Authority shall be financed through budgetary grants from the Ministry of Finance;
59. The fees and charges including fines and penalties collected by the Authority shall be deposited into the Government Revenue Account with the exception of revenues collected and deposited in the Universal Service Fund account in accordance with section 234 of this Act.
60. The Government shall ensure that the Authority is adequately funded to enable it to effectively and efficiently exercise its regulatory functions and discharge its responsibilities as provided in this Act.

### **General mandate of the Authority**

61. The Authority shall adopt Rules and Code of Conduct for the efficient functioning of the Authority.
62. The Authority shall implement the provisions of this Act, Rules and Regulations covered by this Act.

63. The Authority shall study and keep under constant review trends in development of ICT and Media sectors within and outside Bhutan.
64. The Authority shall, when directed by the Ministry, give information and advice on any matter falling within its competence or statutory responsibilities, including advice on:
  - (1) ICT and Media policies;
  - (2) Bhutan's positions and policies relating to ICT and Media matters at the international, regional and national levels; and
  - (3) The establishment of technical standards and rules applicable to ICT and Media facilities and services.

### **Functions of the Authority**

65. In accordance with the general mandate laid down in sections 61 to 64 of this Act, the Authority's principal functions shall be to:
  - (1) Grant licenses, certificates and permits, and regulate ICT and Media facilities and services including places of entertainment that are based on ICT and Media facilities and services, and enforce license conditions;
  - (2) Ensure that licensees, permit-holders and other users of the radio equipment or devices comply with requirements laid down by relevant international, regional or national organizations in respect of equipment and technical standards and environmental health and safety standards, including electromagnetic radiation and emissions;
  - (3) Regulate and monitor compliance with national standards, international or other obligations entered into by the Government in relation to ICT and Media matters;
  - (4) Regulate interconnection or sharing of infrastructure and facilities between or among ICT facility providers;
  - (5) Maintain and promote competition and take action to prohibit, prevent and bring to amend any abuse of market power or anticompetitive behavior within the ICT and Media industry;
  - (6) Ensure interoperability and efficient use of ICT and Media facilities and services;
  - (7) Ensure that licensees and permit-holders are able to carry out their obligations to provide services free of undue delay, hindrance or impediment;

- (8) Ensure the proper maintenance of accounting systems by the public ICT providers and media services providers;
- (9) Assign spectrum consistent with the spectrum policy and plan;
- (10) Plan, administer, manage and assign numbering for ICT services;
- (11) Protect consumers of ICT and Media services, among others, the rates charged for, and the quality and variety of ICT services provided;
- (12) Provide an effective, efficient and affordable mechanism for the investigation and resolution of complaints;
- (13) Promote technological innovation in the ICT and Media sectors;
- (14) Plan and manage universal service plans and the Universal Service Fund pertaining to the ICT facilities and services based on policy directives issued by the Ministry;
- (15) Create competitive and dynamic ICT services market; and
- (16) Ensure universal access to all ICT services at affordable rates.

#### **Powers of the Authority**

66. The Authority shall be authorized to:

- (1) Determine the categories of licenses to be issued and to classify types of ICT and Media facilities and services and radio communication services including application services in line with the policies issued by the Ministry;
- (2) Collect data and any other related statistical information for the proper discharge of its functions and responsibilities;
- (3) Determine tariff, rates, fees and charges for licensed services including fees for the usage of spectrum in accordance with the policy directives issued by the Ministry;
- (4) Designate licensees as universal service providers;
- (5) Collect fees including license fees, and any other charges levied or imposed as fines and penalties under this Act or rules and regulations made thereunder;
- (6) Establish advisory or specialised bodies as it sees fit for the purpose of advising the Authority on any matter pertaining to the exercise, performance and discharge of its duties, functions and powers under this Act;

- (7) Issue and enforce guidelines and codes of practice governing the ICT and Media sectors;
- (8) Recover the cost incurred by the Authority for the regulatory activities undertaken in relation to the ICT and Media activities whilst ensuring that any fees or charges levied or imposed are reasonable having regard to the purpose for which they are levied or imposed; and
- (9) Perform all or any powers in furtherance of the objects of this Act, or such as may be prescribed by the Rules and Regulations.

### **Power to require information**

- 67. The Authority may, by notice in writing direct any person of ICT and Media Facilities or ICT and Media Services:
  - (1) To produce, at a time and place specified in the notice, any document, or information specified in the notice which is in that person's custody or control;
  - (2) To appear, at a hearing, before the Authority at a time and place specified in the notice to give any evidence, either orally or in writing; and
  - (3) Carrying on any business to furnish estimates, returns or other information as may be specified in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.
- 68. A person shall not be compelled to produce a document under section 67 of this Act, which the person could not be compelled to be produced in a civil proceeding or civil court or give any information which the person could not be compelled to give in evidence in such proceedings.
- 69. In the event a person fails to comply with a notice under section 67 of this Act, the Court may, on the request of the Authority, make order as the Court deems fit for requiring the default to be made good and such order may provide that all the costs or expenses incidental to the application shall be borne by the person in default.

### **Power to Establish Advisory or Specialised Bodies or invite Technical experts**

- 70. The Authority may establish for a specified period, ad-hoc advisory or specialised bodies as it deems fit consisting in each case of members as it may from time to time appoint or invite technical experts or specialised persons to participate in the Authority meeting but such persons shall not be considered as members of the Authority.

71. An advisory or specialised body shall advise the Authority on any matter:
- (1) In respect of which any of the Authority's functions is exercisable; and
  - (2) Which is referred to it by the Authority.
72. The Authority may, as soon as practicable, publish copies of reports or other documents submitted by such advisory or specialised body.
73. The remuneration and other allowances payable to an Advisory body or special invitee shall be as prescribed in the Rules and Regulations by the Authority.

#### **Power to regulate competition**

74. A licensee shall not engage in any conduct which would have the effect or likely effect of obstructing fair competition, unless specifically authorised in the Rules and Regulations.
75. In the event of a licensee breaching section 74 of this Act, the Authority may:
- (1) Direct the licensee to cease conduct which has, or may have, the effect of substantially lessening competition;
  - (2) Cancel or suspend the license;
  - (3) Direct the licensee to undertake remedial action; or
  - (4) Impose a fine prescribed in the Rules and Regulations.

#### **Power to issue directions, guidelines or codes of practice**

76. In order to effectively and efficiently carry out its functions and responsibilities under this Act, the Authority may by notification issue directions, guidelines or codes of practice consistent with this Act and Rules and Regulations made thereunder.
77. Any direction, guideline or code of practice issued under section 76 of this Act shall be adopted and published in such manner as the Authority considers appropriate for bringing the contents thereof to the attention of persons likely to be affected by them.

#### **Power to develop Rules and Regulations**

78. The Authority may, for carrying out effectively and efficiently all its functions and responsibilities under this Act, may develop and approve Rules and Regulations consistent with this Act.
79. All Rules and Regulations made and approved by the Authority under section 78 of this Act shall be sent to the Minister for endorsement.

80. The Minister may within thirty days endorse or repudiate the Rules and Regulations submitted by the Authority.
81. The Rules and Regulations shall become effective only upon endorsement by the Minister.
82. The Authority shall develop Rules and Regulations for the purpose of sections 78 to 81 of this Act in accordance with the process and requirements prescribed under the Act taking into consideration the:
  - (1) Interests of the sovereignty, security, unity and integrity of Bhutan;
  - (2) Interest of peace and well-being of the nation;
  - (3) Interests of friendly relations with foreign States; or
  - (4) Objects and other provisions of this Act are not contravened.

### **Annual report**

83. The Authority shall, as soon as practicable, after the end of each calendar year, and in any case no later than thirty-first March of the succeeding year, submit to the Minister a report on its activities during that year.
84. Every such report shall include:
  - (1) A general survey of developments during the year to which it relates, in respect of matters falling within the scope of the Authority's functions;
  - (2) A statement detailing the Authority's financial performance, including income, expenditure, assets and liabilities including the status on the implementation of the Universal Service Funds;
  - (3) A summary of the issues taken up by any ad hoc advisory bodies during that year; and
  - (4) Such other information as may be required by the Ministry.

### **Agreements to be registered with the Authority**

85. Every agreement entered into or made by an ICT or Media facility provider or service provider falling under one or more of the following categories shall, within thirty days from the execution of such agreement, be registered with the Authority:
  - (1) Shareholder's, business or promoter's agreement;
  - (2) Change of ownership or control agreement including those of their parent bodies in Bhutan or abroad, if applicable;
  - (3) Interconnection and infrastructure sharing agreement; and

(4) Such other agreements as may be specified by notification in this behalf by the Authority from time to time.

86. In the event of a licensee failing to register an agreement in accordance with section 85 of this Act unless specific exemption is granted by the Authority, the licensee shall be imposed a fine as may be prescribed in the Rules and Regulations.

### **Publication of Information and Advice**

87. The Authority may carry out study or research on matters of importance to consumers, service providers, and the ICT and Media sector and publish the findings thereof, in such form and manner as it may consider appropriate.

88. The Authority shall encourage associations in the ICT and Media sectors to prepare and disseminate to their members codes of practice for safeguarding and promoting the interests of consumers, purchasers and other users of ICT or Media facilities or services.

### **Register of Rules and Regulations, directives, orders and licenses**

89. The Authority shall maintain a register of Rules and Regulations, directives, licenses and permits granted, codes of practice and sets of guidelines and notices issued, and agreements registered with it in such form as it may determine;

Provided that, if it appears to the Authority that the entry of any information in the register would be against the commercial interests of any person, it shall not record such information in the register.

90. The Authority shall update register and make it accessible for public inspection during normal working hours.

91. A person may, on payment of fee as may be prescribed by an order, request the Authority to provide a copy of or extract from any part of the register duly certified by the Authority to be a true copy or extract.

### **Hearings of complaints**

92. The Authority may hear and determine dispute:

- (1) Between two or more service providers on issues relating to spectrum interference, interconnectivity, infrastructure sharing, denial of fair access and practices restricting fair competition;
- (2) Complaint from any person regarding contravention of the provisions of this Act, rules and regulations or orders made thereunder; and
- (3) Any matter arising out of the enforcement of any provision of this Act;



93. For purposes of section 92 of this Act, the Authority may pass orders, and issue directions, as it deems fit.
94. A party not satisfied or aggrieved by the decision or orders of the Authority, may appeal to the Bhutan Information, Communication and Media Appellate Tribunal constituted under this Act within ten days.

#### **Immunity from prosecution**

95. No legal proceeding or suit shall lie against any Member or employee of the Authority in respect of official duties done in good faith.
96. An employee of the Authority shall not be suspended or prosecuted in the court of law by any entity for any act alleged to have been committed in the discharge of duties under the provisions of this Act, without first notifying the Authority.

#### **Immunity against suit for violation of intellectual property rights**

97. In case of violation of copyright or other intellectual property or related rights by a licensee or permit or authorisation holder, an action whether in civil or criminal law shall not be brought against the Authority or any Member or employee of the Authority merely on the ground that the Authority granted a license, permit or authorisation under this Act.

#### **Auditing**

98. The Royal Audit Authority shall carry out annual auditing of the Authority including performance audit in accordance with the Audit Act of Bhutan and rules and regulations made there-under.

## **CHAPTER FOUR: MEDIA COUNCIL**

#### **Establishment**

99. The Ministry shall establish an independent body, to be called the Media Council, to:
  - (1) Promote and protect freedom and independence of the media;
  - (2) Serve as a standard-setting body and regulate or curtail harmful, offensive, illegal or antithetical content on the internet and other ICT and Media services, unless otherwise provided under specific provisions in this Act.
  - (3) Hear the complaint and settle the dispute in relation to offences of content not amounting to criminal offences which are prescribed under the Rules and Regulations;

- (4) Promote and enhance ethical and professional standards amongst journalists and media enterprises;
- (5) Provide recommendations on matters affecting the media sector;
- (6) Ensure objective and fair treatment of any person by the media;
- (7) Protect general public and more specifically vulnerable sections of the population such as children and young persons from undesirable influences of all Media services;
- (8) Maximize the independence of editors and other journalists from proprietorial and other interference.

100. The Minister shall appoint the members of the Media Council comprising of;

- (1) One person nominated by an organisation representing the Journalists;
- (2) One person nominated by an organisation representing the Film sector;
- (3) One eminent private lawyer nominated by the Ministry;
- (4) One member nominated from amongst the Civil Society Organisation by the Civil Society Organisation Authority; and
- (5) The Head of the Department of Information and Media

Provided that if the bodies are unable to nominate, the Ministry may allocate the power to nominate to a sub-set of the relevant bodies to ensure timely nomination.

101. The nominees under section 100 of this Act shall:

- (1) Be a citizen of Bhutan;
- (2) Not be a member or an employee of a political party;
- (3) Not be convicted for any criminal offence and sentenced to imprisonment; or
- (4) Not be adjudged insolvent and has not been discharged.

### **Election of Chairperson**

102. The members of the Media Council shall elect a Chairperson from among its members through a secret ballot at the first meeting of the Media Council or whenever a vacancy occurs.

### **Tenure of Members**

103. The Members of the Media Council shall hold office for a period of three years, and may be re-appointed for an additional of one term.

## **Resignation**

104. A member of the Media Council may resign from office by giving notice thereof in writing to the Chairperson.  
Provided that in the case of the Chairperson such notice shall be addressed to the Ministry.

## **Removal**

105. A member of the Media Council may be removed by the Minister, if he or she:
- (1) Is adjudged insolvent;
  - (2) Becomes physically or mentally incapable of acting as a member;
  - (3) Is convicted of any offence and sentenced to imprisonment;
  - (4) Acquires financial or other interest as is likely to affect prejudicially the capacity to functions as a member; or
  - (5) Abuses the position as to render continuance in office prejudicial to the public interest.

## **Filling of Vacancy**

106. Where a vacancy occurs in the membership of the Media Council the appointment procedure provided under section 101 and 102 of this Act shall apply.

## **Funds**

107. The funds of the Media Council shall consist of:
- (1) Grants from the government;
  - (2) Fees and other charges paid for services rendered by the Media Council; and
  - (3) Grants, gifts and donations from other neutral sources

## **Accounts and audit**

108. The Media Council shall be authorised to use funds collected by it and use if for the purpose of its functioning and must keep proper books of accounts and other records of accounts of the income, expenditure, assets and liabilities.
109. The Royal Audit Authority shall carry out annual audit of the Media Council.

## **Rules and Regulations**

110. Upon approval of the Government, the Ministry shall specify in the Rules and Regulations:
- (1) Remuneration to be paid to the secretariat of the Media Council;

- (2) Sitting fees to the members of the Media Council;
  - (3) Other matters relating to the functioning of the Media Council.
111. For the purpose of this Chapter, “Rules and Regulations” shall be developed by the Media Council and approved by the Ministry.
112. Any person aggrieved by the decision of Media Council shall within ten working days appeal to the Appellate Tribunal constituted under this Act.

## **CHAPTER FIVE: BHUTAN INFORMATION, COMMUNICATION AND MEDIA APPELLATE TRIBUNAL**

### **Establishment**

113. The Ministry shall establish the Bhutan Information, Communication and Media Appellate Tribunal to act as an appellate body empowered to adjudicate cases against the decision or orders of the Authority, Media Council and Film Commission or on issues related to the Authority, Media Council and Film Commission.
114. The Tribunal shall comprise three members, well-versed in the field of ICT, law or administration, and appointed by the Minister in accordance with the Rules and Regulations developed and approved by the Ministry.

### **Eligibility for Appointment as a Member of the Tribunal**

115. A person shall be eligible for appointment as a Member of the Tribunal, if a person:
- (1) Is a citizen of Bhutan;
  - (2) Has attained at least thirty-five years of age on the date of nomination;
  - (3) Has at least ten years of experience in the field of information and communications technology, telecommunications, media, law or administration;
  - (4) Is not convicted for any criminal offence and sentenced to imprisonment; and
  - (5) Has not been adjudged insolvent.

### **Election of Presiding Officer**

116. The members of the Tribunal shall elect a Presiding Officer from among its members through a secret ballot at the first meeting of the Tribunal or whenever a vacancy occurs.

### **Functions**

117. Appeals against the order of the Authority shall be filed first to the Tribunal and no proceedings may be brought directly in any Court or other forum.



118. A party aggrieved by the decision of the Tribunal may file an appeal to the High Court within ten working days.
119. The Tribunal shall regulate its own procedure in a transparent manner based on the best practices to discharge its functions under this Act.

### **Powers of the Tribunal**

120. The Tribunal shall exercise same powers as are vested in a Civil Court under the Civil and Criminal Procedure Code in respect of:
  - (1) Summoning and enforcing the attendance of any person and examining the person on oath;
  - (2) Requiring the discovery and production of documents;
  - (3) Requisitioning any public record or document or a copy of such record or document from any office; and
  - (4) Dismissing an application for default or deciding it ex parte.

### **Rules and Regulations**

121. The Ministry shall by Rules and Regulations approved by the Cabinet, determine:
  - (1) Terms of appointment, sitting fee and service conditions of the Tribunal members;
  - (2) The establishment of the Secretariat;
  - (3) Allocation of budget; and
  - (4) Other matters relating to the functioning of the Appellate Tribunal.

## **CHAPTER SIX: ICT AND MEDIA FACILITIES AND SERVICES**

### **National Critical ICT and Media infrastructure**

122. The Cabinet may, on the recommendation of the Minister, designate an ICT or Media infrastructure as National Critical ICT or Media infrastructure.
123. The Ministry shall make efforts to centralize the management of National Critical ICT and Media infrastructure, thereby enhancing the efficiency of the process.
124. The Ministry shall develop a National Critical ICT and Media infrastructure Management System in consultation with the relevant authorities.

## **Ownership of ICT and Media Enterprises**

125. The Authority may, by Rules and Regulations ensure competition and prevention of monopoly in the telecommunication and media sectors by:

- (1) Specifying eligibility conditions for granting of licenses or registrations;
- (2) Imposing restrictions on cross ownership of media and telecom enterprises; and
- (3) Imposing restrictions on the number of licenses or extent of accumulation of interest in such licenses by a person.

Provided that a person shall be permitted to hold majority share in one media house such person's share in subsequent media houses shall not exceed five (5) percent shares;

Provided further that a person shall be permitted to hold majority shares in one Telecom enterprise, such person's share in subsequent telecom company shall not exceed five (5) percent shares.

## **Requirement of License**

126. The Authority shall, in accordance with Licensing Policy, Rules and Regulations, specify the ICT and Media facilities and services, broadcasting and advertising services and other value added services that are required to be licensed and stipulate the terms and conditions.

127. The Authority shall, in accordance with licensing policy, Rules and Regulations, specify the ICT and Media facilities and services that shall be prohibited under this Act.

128. A person shall not own or operate an ICT and Media facility or provide any ICT and Media service or value added services without a valid license.

129. The provisions of section 128 of this Act shall not apply to an ICT and Media facility established or equipment installed by a person for the sole purpose of personal, private or internal organisational use.

Provided that such equipment does not interfere with the operations of ICT and Media facility or services and does not amount to using spectrums identified for allocation.

130. The Authority may, by Rules and Regulations, make provision for the issuance of a consolidated license where several licenses or other authorisations are necessary to be obtained by a single applicant under various provisions of this Act.

131. The licensee shall comply with the specified standards for ICT and Media facilities and non-compliance shall be a reasonable ground to refuse to provide, to discontinue or to interrupt the provision of the relevant ICT and Media facility or services.

### **Granting of Licenses**

132. A person shall not be eligible for an ICT and Media facilities and services license, if such person:

- (1) Is a political party;
- (2) Is adjudged insolvent or has entered into a composition or scheme of arrangement with the creditors;
- (3) Is of unsound mind; or
- (4) Does not fulfil other conditions prescribed in the Rules and Regulations.

133. Every applicant for a license or permit to operate an ICT or Media service shall disclose to the Authority:

- (1) The names and addresses of the persons holding shares or ownership or other beneficial interests therein; and
- (2) Other financial information relevant to the application as may be requested by the Authority;
- (3) Such other information as may be required by the Authority.

134. The information shall be furnished in such form and at such time as may be prescribed in the Rules and Regulations, notifications or directives made or issued by the Authority for this purpose.

135. The Authority shall, within a month from the date of issuing such license, publish the license in such manner as it may consider appropriate for bringing it to the attention of the general public.

### **Procedure for the grant and renewal of a License**

136. A person who applies for a license or requests renewal under this Act shall comply with the procedure established by the Authority under this Act.

137. The Authority shall, before granting a license under this Act, take into account whether the:

- (1) Applicant possesses, or has ready access to, the technical expertise necessary to fully perform the obligations;
- (2) Applicant is a fit and proper person as defined under this Act; and
- (3) Granting of licenses conform to the objectives of this Act.



138. In determining, whether a person is a ‘fit and proper person’, regard shall be had to all the relevant circumstances, including his or her:
- (1) Honesty, integrity and reputation;
  - (2) Competence and capability; and
  - (3) Financial solvency.

### **Duration of License**

139. A license granted under this Act shall be valid for the period specified in the license or, where no such period is specified, for such duration as may be laid down in the Rules and Regulations, subject to renewal.

Provided that a license for:

- (1) An ICT facility shall not be granted for a period longer than twenty-five years;
- (2) An ICT service, including Media service, shall not be granted for a period longer than fifteen years.

### **License fees**

140. A license granted under this Act shall be subject to a license fees prescribed in the Rules and Regulations made by the Authority.

### **Non-Renewal of License**

141. Where the Authority has reasonable grounds not to renew a license, it shall inform the licensee in writing within a reasonable time of its intention not to renew the license.
142. A licensee shall be given thirty days to make written representations to the Authority in respect of the refusal to renew a license under section 141 of this Act.
143. The Authority shall, within fifteen days of the receipt of the submission, consider any written representations made under section 142 of this Act, and inform the licensee of its decision on the matter.
144. If aggrieved by the decision under section 143 of this Act, the licensee may appeal to the Appellate Tribunal within ten working days of the receipt of a copy of the decision.

### **Modification of License**

145. A license granted under this Act may be modified in part or whole, including any terms and conditions therein, where the Authority and the licensee, by agreement in writing, agree to modify the license.

146. The Authority on the recommendation of the Ministry may, without the agreement of the licensee, modify a license granted under this Act, in part or whole, including in relation to any terms and conditions therein in the interest of national security.
147. Where the Authority, on the recommendation of the Ministry, considers that a license should be modified for reasons of national security, the Authority shall give to the licensee a written notice that:
- (1) Sets out the proposed modification;
  - (2) States the reasons for the proposed amendment; and
  - (3) Invites the licensee to show cause within thirty days.
148. After considering representations made under section 147 of this Act, the Authority may modify the license, if it considers the license should be modified in:
- (1) The manner set out in the notice; or
  - (2) Some other manner consistent with the representations.
149. If aggrieved by the decision under section 148 of this Act, the licensee may appeal to the Appellate Tribunal within ten days of receipt of the decision.

### **Transfer of License**

150. The licensee shall not assign or transfer the license to any other party unless prior written approval of the Authority is granted subject to fulfillment of requirements including transfer fee and other levies stipulated by the Authority in the Rules and Regulations.
151. The Authority may approve an application for the transfer of a license if it is satisfied that the proposed transferee meets all the requirements of this Act and is able to undertake the obligations imposed by this Act and by the terms and conditions of the license.
152. The Authority shall, before approving the transfer, issue a public notice, duly published in the media, containing particulars of the proposed transfer.
153. A person having objection against the transfer shall show cause against the transfer within one month of issuance of such public notice.
154. The Authority may, at any time, carry out enquiries as it may deem necessary where it suspects that there has been a de facto or de jure transfer of a license contrary to section 151 of this Act.

155. The Authority may, by giving appropriate reasons, refuse transfer of license in view of breach of licensing terms and conditions, contravention of other laws of the country, and in the public interest.

### **Obligation of Licensee**

156. A licensee shall take reasonable actions to prevent its users from carrying out illegal activities using the ICT and Media facilities or services, applications services or content applications services that the licensee owns or provides, or in relation to, the commission of any offence under any law in force in the country.

157. The licensee shall operate the facilities or provide services in accordance with the obligations, conditions, restrictions, and quality of service, tariff and rates determined by the Authority in the Rules and Regulations.

158. The licensee shall be bound to provide information including personnel details, annual reports and other information as required by the Authority within the prescribed time period using the format prescribed by the Authority.

159. The Licensee shall allow the Authority or any officer duly authorized by the Authority to inspect and obtain information, as necessary in discharging its regulatory functions.

160. A provider of ICT and Media facility or services shall not claim any limitation of its liability for any offence under this Act, unless such limitation has been expressly authorized or prescribed by the Authority.

### **Non-discrimination and continuity of supply**

161. A licensed ICT or Media facility or service provider may, on grounds which are reasonable, non-arbitrary and non-discriminatory and with approval of the Authority:

- (1) Refuse to provide an ICT and Media facility or service to any person; or
- (2) Discontinue or interrupt the provision of such facility or service to a subscriber and/or a consumer.

162. Where any action specified in section 161 is taken, the licensee shall promptly provide the affected person or subscriber reasons in writing for such action.

163. The person affected by the action of the ICT or Media facility or service provider under section 162 of this Act may make a complaint to the Authority within thirty days of the refusal, discontinuance or interruption.

### **Enforcement, Suspension or Revocation of a License**

164. Where it appears to the Authority that a licensee is in contravention of any of the terms and conditions of the license, the Authority shall by an order make such provision, including payment of fine, as it appears necessary for the purpose of securing compliance.

165. The Authority may suspend or revoke a license or a permit after giving written notice to the holder and giving the holder a reasonable opportunity to make representations to the Authority within thirty days with respect thereto, where the Authority is satisfied that:

- (1) The holder has contravened this Act, rules and regulations or the terms and conditions of the license or permit;
- (2) The license or permit was obtained through misrepresentation; or
- (3) On giving written notice of suspension or revocation to the holder, without having to give the holder an opportunity to make representations to the Authority with respect thereto, where the holder fails to comply with a request to pay fees or interest due.

166. The Authority shall develop Rules and Regulations to ensure enforcement of license terms and conditions and procedures for suspension and revocation of license.

### **Interconnection**

167. The Authority shall ensure equitable and non-discriminatory interconnection across various networks is promoted.

168. The Authority may determine the type of ICT and Media facility or service or any other facilities and/or service which facilitate the provision of network services or applications services, including content applications services to be eligible for interconnection.

169. All ICT and Media facilities or services under section 168 of this Act shall provide interconnection directly or indirectly with the facilities and equipment of other ICT and Media facilities and services and shall not install features, functions, or capabilities that do not comply with the National Standards.

170. A licensee who interconnects with another licensee shall take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other licensee's facilities or services.
171. A request by a licensee to make any interconnection with another licensee shall be refused only on technical grounds which shall be verified by the Authority.
172. Any interconnection provided by a licensee pursuant to the provisions of this Chapter shall be provided at reasonable rates, and on terms and conditions which are not less favourable than those, provided to any:
- (1) Other part of the licensee's own business;
  - (2) Non-affiliated supplier; or
  - (3) Subsidiary or affiliate of the licensee.
173. The Authority shall, by Rules and Regulations, make provision for the regulation of interconnection which inter alia includes agreements, resolution of pre-contractual or other disputes relating to interconnection and the costs of interconnection.

### **Infrastructure sharing**

174. The provisions under sections 167 to 173 of this Act shall apply, mutatis mutandis, to the sharing of ICT and media infrastructure.

### **Effect of agreement or arrangement**

175. A provider of ICT and Media facility or service shall not, without the prior approval of the Authority, give effect to any agreement or arrangement, whether oral or written, with another ICT or Media facilities or service provider with regard to the:
- (1) Interchange of their respective facilities or services;
  - (2) Management or operation of either or both of their ICT or Media facilities or services or any other ICT or Media facilities or services with which either or both are connected; and
  - (3) Apportionment of rates or revenues between the providers.

### **Numbering**

176. The Authority shall establish and manage a national plan for the allocation of telephone numbers in an equitable manner among licensees in accordance with the Rules and Regulations made thereunder.

177. The Authority shall, in managing the national plan for the allocation of telephone numbers among licensees, pay due regard to the existing allocation of numbers.
178. Subject to this Act, the Authority may make Rules and Regulation imposing on any licensee, the responsibility to offer number portability, if the Authority is satisfied on reasonable grounds that the:
- (1) Benefits likely to arise from the requirement to provide a particular form of number portability outweigh the likely cost of implementing it; and
  - (2) Requirement will not impose an unfair burden on any licensee.

#### **Donation funds, benefits or loans from foreign sources**

179. A person shall not receive on behalf of, or for the purposes of, any ICT or Media facility or services in Bhutan any donation, benefits in kind, or loans from a foreign source. Provided that the loans for bona fide commercial purpose may be raised in accordance with the laws in force in Bhutan with the prior approval of the Minister.
180. The Minister may grant approval referred to in section 179 of this Act, if the Minister is satisfied that the donation from foreign sources is specifically intended for the direct professional and commercial development of the ICT or Media sector.
181. Any funds, benefits or loans obtained from a person in contravention with section 179 shall be forfeited to the Government.

#### **Foreign participation in the ICT and Media Industry**

182. Foreign Direct Investment in the ICT and Media sector may be granted by the Cabinet after giving due regard to all circumstances including national interest and the prevailing Foreign Direct Investment policy; Provided that this section shall not apply to the media sector relating to news.
183. For the purpose of section 182 of this Act, the Authority shall, based on a written policy of the government, issue license to allow participation by foreign companies in the ICT and media sector under such terms and conditions as it may impose from time to time.
184. Notwithstanding section 183 of this Act, a domestic company operating within Bhutan under this Act may enter into commercial contracts with a foreign company for the sale or purchase of equipment, consumables, hardware or programming or other software, or consultancy services, subject to any other law which may govern such contracts.

185. A copy of such contracts entered into shall be deposited with the Authority within thirty working days from the date of entering into such contracts.

## **CHAPTER SEVEN: INSTALLATION OF ICT AND MEDIA FACILITIES**

### **Installation permits for ICT and Media facilities**

186. An ICT and Media facilities provider may apply to the Authority for facilities installation permit authorizing the facilities provider to carry out the installation of one or more facilities, in the manner provided in the Rules and Regulations.

### **Entry upon and construction of ICT and Media facilities apparatus across any land**

187. Subject to section 186 of this Act, an ICT and Media facility provider may:

- (1) Enter upon any land, including any street, road, footpath or land reserved for public purposes and construct and maintain apparatus upon, under, over, along or across any land, street, road, footpath or waterway;
- (2) Alter, remove or replace the apparatus; and
- (3) Attach wires, stays or any other kind of support to any building or other structure.

188. In taking any action under section 187 of this Act, the ICT and Media facility provider shall:

- (1) Comply with environmental policy of the government and relevant laws;
- (2) Consult with and seek prior agreement from local authorities, utility service providers, owner and other parties who may be affected by the planned installation of the facilities;
- (3) Minimise damage in the installation of the facilities;
- (4) Restore without unreasonable delay any damage caused during the installation of the facilities and leave the land in a condition reasonably similar to the one that existed before the installation of the facilities; and
- (5) Act in good faith.

189. Local authorities, utility service providers and persons owning or having the care of any land who are likely to be affected by the planned installation of the facilities shall have a general obligation to:

- (1) Grant reasonable access to their land for the purposes which have been authorised under this Act;
- (2) Seek agreement with the facility provider, wherever possible and under terms that are reasonable; and
- (3) Act in good faith.

### **Purchase or Lease of Land**

190. The Minister may recommend to the relevant Government agency the purchase or lease any land in Bhutan by an ICT or Media facility provider as required by the facility provider for, or in connection with, the establishment or operation of a facility provider's system or as to which it can reasonably be foreseen that it will be so required, in accordance with the prevailing laws.
191. The Ministry shall not recommend the purchase or lease of land, unless it is reasonably satisfied that the ICT or Media facility provider has exhausted all reasonable alternatives to purchase or lease.
192. The purchase or lease of land under section 191 of this Act shall be done with prior approval of the Cabinet in accordance with the laws pertaining to the acquisition of land.
193. Where an ICT or Media facility provider has acquired any land under section 192 of this Act, the facility provider shall not dispose of that land or of any interest or right in or over it except with the consent of the Authority, nor use it for any purpose other than a purpose authorised under this Act.

## **CHAPTER EIGHT: SPECTRUM AND RADIOCOMMUNICATION**

### **Spectrum plan**

194. The Authority shall develop and manage a spectrum plan in respect of any part or the entire spectrum in accordance with the policy directives issued by the Ministry.

Provided that adequate spectrum shall, as may be deemed appropriate, be reserved for community radio.

### **Prohibition on using spectrum without assignment**

195. Subject to such exemptions as may be determined by the Ministry, no person shall intentionally use any part of the spectrum, unless he or she holds:
  - (1) A spectrum assignment issued under this Act; or



- (2) An apparatus assignment issued under this Act.

### **Issue of spectrum assignment**

196. The Authority may issue a spectrum assignment which confers rights on a person to use one or more specified frequency bands for any purpose consistent with the spectrum plan.

### **Issue of apparatus assignment**

197. The Authority may issue an apparatus assignment which confers rights on a person to use the spectrum to operate an ICT or Media facility of a specified kind at a specified frequency or in any specified frequency band or bands.

### **Transfer rules and regulations**

198. The Authority may formulate Rules and Regulations on transfer of the rights of the spectrum assignment.

### **Compulsory acquisition of assignments**

199. The Authority shall develop procedures for the compulsory acquisition of assignments in a determined spectrum.
200. The Authority may pay a reasonable amount of compensation to the holder of an assignment whose assignment has been acquired prior to its expiry under section 199.

### **Radio communication**

201. The Authority is vested with the power to control, plan, administer, manage, regulate and issue license of radio frequency in accordance with the Rules and Regulations developed by the Authority.
202. In controlling, planning, administering, managing, regulating, licensing and permitting the use of radio frequency spectrum, the Authority shall comply with the applicable standards and requirements under the laws in force and international legal instruments ratified by Parliament.
203. The Authority shall develop National Radio Rules and Regulations to deal with the manufacture, sale or use of radio communication apparatus.

### **Radio Frequency Band Plans**

204. The Authority may from time to time prepare a Frequency Band Plan in respect of any part of the radio frequency spectrum in accordance with the policy issued by the Ministry.
205. A Frequency Band Plan shall:

(1) Define how the radio frequency spectrum is used;

- (2) Aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient, economic and effective manner;
- (3) Aim at reducing congestion in the use of radio frequencies and at protecting radio frequency users from any interference or other inability to make use of the radio frequencies assigned to them;
- (4) Avoid obstacles to the introduction of new technologies, facilities and services; and
- (5) Aim at providing opportunities for the introduction of the widest range of ICT and Media services and the maximum number of users thereof as is practically feasible.

206. The Authority shall, by Rules and Regulations, provide for the preparation, implementation and review of a Frequency Band Plan.

### **Exemption for Radio communication Licenses**

207. The Ministry may, in consultation with the Authority, specify the class of radio communication stations or radio communication apparatus to be exempted from the requirement of a license or permit as specified in the Rules and Regulations. .

### **Amateur Radio communication provider's permit**

208. The Authority may issue, modify and revoke amateur radio communication station provider's permits in accordance with the provisions of the National Radio Rules and Regulations, and may require such permit holders to pay fees as prescribed therein.

### **Control of possession of Radio communication apparatus**

209. A person shall not possess any radio communication apparatus designed or adapted for emission, which uses frequency restricted in the frequency band plan, unless he or she possesses:

- (1) Permit issued by the Authority in accordance with the National Radio Rules and Regulations; or
- (2) An ICT or Media facility license relating to radio communication issued under this Act.

210. If a person possesses radio communication apparatus in contravention of section 209, the Authority shall:

- (1) Seal or alter such apparatus or any part thereof in order to prevent the use of that radio communication apparatus for the purpose of transmission or reception;

- (2) Issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not used during such period; or
- (3) Seize such apparatus.

211. Radio communication apparatus seized under section 210(3) of this Act shall be held by the Authority until the issue is resolved by the Authority, Tribunal or a Court of competent jurisdiction, as the case may be.
212. The Authority shall, upon settlement of dispute under section 211, dispose-off the apparatus in the manner prescribed in the Rules and Regulations.

### **Provisions regarding interference**

213. The Authority shall make provisions in the National Radio Rules and Regulations to prevent interference with radio communications.
214. If the Authority is of the opinion that there is any interference-causing equipment, radio apparatus or radio-sensitive equipment or *suomoto*, it may take necessary steps including random test to ensure an interference-free environment.
215. If an interference causing equipment is discovered pursuant to section 214 of this Act, the Authority may direct the person to remove the interference.

### **Human exposure to electromagnetic fields**

216. The Authority shall make appropriate provisions in the National Radio Rules and Regulations to prevent harmful exposure to electromagnetic fields, and to ensure human health and safety.

## **CHAPTER NINE: BROADCASTING**

### **Broadcasting**

217. A person shall not establish or run a broadcasting service or business, without a valid license issued by the Authority in accordance with the Government's policy and such conditions and requirements as prescribed by the Authority in the Rules and Regulations.

### **General Obligations on broadcasters**

218. A person holding a broadcasting license under this Act shall:
- (1) Comply with certain obligations, hereinafter referred to as the "public service obligation" as specified in the license;

- (2) Respect the right to privacy of individuals;
- (3) Ensure that no programme forming part of its services infringes any copyright;
- (4) Ensure that advertisements are not deceptive or are not repugnant to good taste; and
- (5) Abide by the programme code developed by the Authority setting standards for the time and manner of programmes to be broadcast by licensee.

### **Public service obligation on broadcasters**

219. (1) The extent and scope of obligations shall be specified in individual license and these may vary between providers of different broadcasting services.

- (2) Notwithstanding provision under section 219(1) of this Act, the Bhutan Broadcasting Service shall be designated as the public service broadcaster and governed by an appropriate eye-law or charter approved for this purpose.

220. The objectives of public service obligation shall include but not be limited to:

- (1) Universal access of radio and television coverage;
- (2) Unbiased and comprehensive coverage of news and current affairs;
- (3) Emphasis on a fair proportion of locally produced and culturally/socially relevant local content;
- (4) Creation and dissemination of innovative and high-quality programming on radio, television and other mass media which is responsive to the needs, aspirations and interests and tastes of diverse audiences within the general public;
- (5) Encouraging pluralism and diversity, including a reasonable mix of public and private sector involvement, in the provision of radio, television and other broadcast services at all levels;
- (6) Provision of adequate opportunities for audience feedback and a reasonable and effective mechanism to deal with audience complaints; and
- (7) Educative information on social issues.

221. Where state funding of broadcasting and related activities is involved, the highest norms of public accountability and transparency shall be followed and editorial independence shall be maximized at all times.

### **Encouragement of independent producers**

222. With a view to promoting local content, building capacity of Bhutanese production houses and furthering diversity in programming, the Government shall encourage every person holding a broadcasting license to ensure that a significant proportion of all programmes are commissioned through independent producers and also require broadcasters and cable/satellite television service providers to buy Bhutanese films and co-finance productions of films.
223. For the purposes of section 222 of this Act, an ‘independent producer’ shall mean a producer of broadcast programmes who is neither owned nor controlled by the holder of the broadcast license on whose network or system, the work of such producer is broadcast.

### **Power to proscribe unacceptable foreign broadcasting services**

224. The Authority may proscribe any foreign ICT service, including foreign broadcasting service, within Bhutan if it is satisfied that it threatens cultural dynamism and harmony of Bhutan, or is likely to lead to incitement to an offence, or is contrary to the provisions of this Act, rules and regulations.
225. For the purpose of section 224 of this Act, if the Ministry is of the opinion that it is necessary to prevent the reception within Bhutan of any service, the Ministry may, by order:
- (1) Authorise the prevention or jamming of the signals of such service by appropriate technical means; or
  - (2) Take such other appropriate action as contemplated by this Act. Provided, that any such order shall only remain in force for such period as the threat to national security in the opinion of the Ministry, remains present.

### **Requirement to maintain recordings**

226. The Authority may at any time make and use recordings of any programme broadcast by any licensee for the purpose of maintaining supervision over such programmes.
227. The Authority may also require licensees to retain, for a period of at least six months, a recording of every programme broadcast by them, and to produce such recordings when demanded for the purposes of examination.
228. The power to require a licensee to retain and produce such recordings, in accordance with section 226 of this Act, shall include the power to call for the scripts of any programme broadcast by the licensee.

## **CHAPTER TEN: UNIVERSAL SERVICE FUND**

### **Universal Service Fund**

229. There shall be established a fund called the Universal Service Fund, to be managed by the Authority in accordance with the Rules and Regulations made thereunder and in accordance with the existing Government Policies.

### **Provisions of Universal Service by specified category of Licensees**

230. The Authority may include a condition in the license requiring a licensee to provide one or more categories of universal service in a transparent and non-discriminatory manner without imposing undue burden on one licensee.

231. A licensee who is required by its license to provide one or more categories of universal service shall do so on such terms, price and quality of services, as may be determined by the Authority.

### **Purpose of the Fund**

232. The Universal Service Fund shall be used solely to compensate the ICT facility provider or ICT service provider who is required to provide universal service by virtue of section 230 and 231 or to facilitate access to ICT services and facilities, especially those in remote areas.

233. The amount of compensation payable under section 232 shall be computed and paid on cost-oriented rates in accordance with the Rules and Regulations made by the Authority, and the conditions attached to the license of the ICT facility or ICT service provider.

### **Contributions to the Fund**

234. The Ministry may, in accordance with the Government policy and by issuing directive, prescribe the source, time, frequency and method for calculating the quantum of monies to be paid into the Universal Service Fund.

### **Universal Service Categories**

235. The Ministry may, by issuing directive, specify:

- (1) The categories of universal service required to reach the unreached and eligibility conditions thereof for the use of this fund; and

- (2) The categories of ICT facility or service providers who may be required to provide one or more of the universal services.

236. For the purposes of section 235, the categories may include:

- (1) Public voice telephony services together with free calls to emergency services and directory assistance;
- (2) Internet access together with free Internet access for schools and hospitals; and
- (3) Such other ICT facility or ICT service as the Government may specify through a policy directive issued by the Ministry.

## **CHAPTER ELEVEN: PRINTING PRESS, BOOKS, NEWSPAPERS AND ACCREDITATION OF JOURNALISTS**

### **License to keep or use printing press**

237. A person shall be required to obtain a valid license issued by the Authority to keep, use or operate a printing press.

Provided that the expression “press” shall not include any facility established or equipment installed by a person for the sole purpose of printing documents for personal, private or internal organisational use.

238. The Authority shall by Rules and Regulations specify eligibility conditions for granting of printing licenses.

239. The license under section 238 shall be in such form and duration, as may be prescribed in Rules and Regulations made by the Authority.

240. Where a licensee breaches any provision of section 239 of this Act or has been convicted of any offence or where the Authority is of the opinion that the continued holding of a license by the licensee is not conducive to the public interest, the Authority may, for reasons to be recorded in writing, revoke the license.

### **Requirement of publishing license**

241. A person shall not publish newspapers and books in Bhutan without a valid license, hereinafter called a “publishing license”, issued by the Authority.

242. A book shall be categorised by the Authority in accordance with the Rules and Regulations, prior to granting a publishing license.

243. The licensee shall obtain a separate license under sections 237 and 241, unless a consolidated license is issued for printing and publishing by the Authority.



### **Obligation of printers and publishers of documents**

244. A person shall not print, publish or distribute, or assist in printing, publishing or distributing any document which does not comply with the requirements of section 241 of this Act.
245. A person who prints any document shall, for six months from the date of its printing, keep one copy of the document and produce the document to any person authorised by the Authority, when required to do so.
246. A document which is created, produced or printed solely for the purpose of personal, private or internal organisational use, or is intended to be used reasonably for official purposes shall be exempt from the requirements of section 241 of this Act.

### **Consideration of applications for license**

247. The Authority shall, when considering applications for publishing licenses, have due regard to the importance of free speech, diverse and vibrant media, convergence of information and communications technology, business and healthy competition among publishers in Bhutan.
248. A publishing license shall be refused, if:
- (1) It poses a threat to the sovereignty, security and harmony of Bhutan or a threat to the interests of peace, stability and well-being of the nation; or
  - (2) It violates conditions as may be prescribed in the Rules and Regulations.

### **Obligation to print certain particulars**

249. Every book or newspaper published in Bhutan shall carry in legible type in each of its edition:
- (1) The names of its editor or author, as the case maybe, and publisher;
  - (2) The name of its printer and place of printing; and
  - (3) The addresses of the registered office of the publisher and printer.
250. A newspaper published from and registered in Bhutan shall carry, once every year at such time as may be specified in the rules and regulations to be made by the Authority, the names, nationalities and addresses of the directors of its publisher and shareholding in the business entity of the publisher responsible for the newspaper.

### **Revocation of license**

251. If a licensee fails to comply with any of the conditions stated in the license, or if its editor, publisher or printer is found in breach of any of the provisions of this chapter, the Authority may impose a fine or revoke the license.

### **Registration of books and newspapers**

252. A person shall register with the Authority a book or newspaper to be made available for sale or distribution to the public in Bhutan, whether published within Bhutan or otherwise.
253. The Authority shall maintain Registers of Books and Newspapers listing the names and other details of all books and newspapers so registered.
254. Upon registration, each book or newspaper published in Bhutan shall be assigned a distinct registration number, which number shall be carried on every copy of the book or newspaper before being released for sale or distribution to the general public in Bhutan.
255. The form and manner of registration of books and newspapers shall be such as may be prescribed by the Authority in the Rules and Regulations made thereunder.

### **Power to declare book or newspaper detrimental to Bhutan**

256. The Ministry may, if satisfied, declare a book or newspaper published outside Bhutan to be detrimental to the interests of the sovereignty, security and harmony of Bhutan or detrimental to the interests of public order.
257. A declaration under section 256 shall be made in writing and shall only take effect after it is duly published.
258. If a book or newspaper declared under section 257 is being imported, sold or distributed to the general public, or kept for the purposes of such sale or distribution, anywhere in Bhutan, the Authority may seize and destroy such copies.
259. In a proceeding under section 258, it shall be presumed, unless the contrary is proved, that any person found in possession of more than five copies of the relevant book or issues of the newspaper in respect of which a declaration is made, is in possession for sale or distribution.

### **Powers of search and seizure**

260. A police officer or a customs officer may after procuring a warrant, seize any book or newspaper found in the possession of any person which the police officer or the customs officer has reasonable cause to believe has been printed, published, sold or distributed or is intended to be published, sold or distributed in contravention of the provisions of this Act.

261. A book or newspaper under section 260 shall, whether or not a person is convicted of any offence in respect thereof, be forfeited by order of a Court and shall be destroyed or otherwise disposed-off as the Court directs.

#### **Accreditation of Journalists**

262. The Authority shall operate a scheme of accreditation under which journalists holding Bhutanese nationality and working for Bhutanese newspapers or other media organisations shall apply for such status in the prescribed form.
263. The Authority shall operate a scheme of accreditation under which journalists holding Bhutanese nationality and working for foreign media organisations shall apply for such status in the prescribed form.
264. The conditions, privileges and procedure for application and the criteria for the grant of accreditation shall be specified in Rules and Regulations made by the Authority.
265. Applications for accreditation shall be dealt expeditiously by the Authority and where an application for accreditation is refused, the Authority shall state the reasons for refusal in writing and communicate the reasons to the applicant as soon as possible.

#### **Ad hoc accreditation for foreign Journalists**

266. Where a foreign journalist intends to be accredited by the Authority, the journalist may apply for 'ad hoc accreditation' with or without conditions, in accordance with the procedure prescribed for this purpose in Rules and Regulations.
267. All applications for ad hoc accreditation shall be dealt expeditiously by the Authority and shall, within thirty days of receipt of an application, inform the applicant whether the application is accepted or refused.
268. If the journalist breaches any of the conditions of accreditation, or where the Authority is satisfied that the continued holding by the journalist of such accreditation is against the public interest, the Authority may, by an order in writing, revoke the accreditation.
269. Revocation of accreditation under section 268 shall be effective as soon as the order is served to the journalist, or where it is not possible or practicable to serve such notice, as soon as a copy of it is delivered to, or affixed upon, the address stated in the application for accreditation.

## **CHAPTER TWELVE: CINEMATOGRAPHIC FILMS, PERFORMANCE OF DRAMAS AND OTHER ENTERTAINMENTS**

### **Film Commission**

270. The Minister shall establish the Film Commission responsible for the promotion, development and providing support to the audio-visual and film industry in the country.

271. The Film Commission shall:

- (1) Promote training and capacity development;
- (2) Promote theatrical performances in all sections of society;
- (3) Grant filming permits, only after coordinating and obtaining location/ sector clearances as may be required within a specified time period and for which the sector concerned shall ensure timely issuance of clearances;
- (4) Review and certify films based on criteria established in the Rules and Regulations approved by the Ministry;
- (5) Promote Bhutan internationally through film; and
- (6) Be responsible for matters incidental thereto.

272. The Film Commission shall be funded by:

- (1) Government support
- (2) Royalties/ filming permit fees from the films;
- (3) Review and Certification fees;
- (4) International donors and agencies;
- (5) Film and entertainment tax levied on or within the film industry;
- (6) Payment for professional services rendered to international film productions;
- (7) Payment for rental of film studio and film equipment; and
- (8) Other fees collected by the Film Commission as may be approved by the Government from time to time.

273. In addition to Section 272, the government shall ensure, as far as practicable, that the Film Commission is adequately financed to enable it to exercise its functions and discharge its responsibilities as provided under this Act.

274. The Film Commission shall be constituted with five members appointed by the Cabinet upon recommendation by the Ministry from amongst people who are knowledgeable in the field of film, media or people from relevant background.

275. A member under section 274 of this Act, shall:

- (1) Be a citizen of Bhutan;
- (2) Not be a member or an employee of a political party;
- (3) Not be a representative of, or employee or hold financial interest in any enterprise of which the main activity is production and distribution of films;
- (4) Not be convicted for any criminal offence and sentenced to imprisonment; or
- (5) Not be adjudged insolvent and has not been discharged.

276. The Members of the Film Commission shall hold office for period of three years and may be appointed for one additional term.

### **Election of Chairperson**

277. The Members of the Film Commission shall elect a Chairperson from among its members through a secret ballot at the first meeting of the commission or whenever a vacancy occurs.

### **Resignation**

278. A member of the Film Commission may resign from office by giving notice thereof in writing to the Chairperson and whereas in the case of Chairperson such notice shall be addressed to the Ministry.

279. The resignation shall have effect from the date of acceptance by the Chairperson for the members of the film commission and from the date of acceptance by the Minister for the Chairperson.

### **Removal**

280. A member of the Film Commission shall be removed by the Cabinet, if he or she:

- (1) Is adjudged insolvent;
- (2) Becomes physically or mentally incapable of acting as a member;
- (3) Is convicted of any offence and sentenced to imprisonment;
- (4) Acquires financial or other interest as is likely to affect prejudicially the capacity to functions as a member; or
- (5) Abuses the position as to render continuance in office prejudicial to the public interest.

### **Filling of vacancy**

281. Where a vacancy occurs in the membership of the Film Commission, the appointment procedure under sections 274, 275 and 276 of this Act.

### **Accounts and audit**

282. The Film Commission shall maintain proper books and other records of accounts of the income, expenditure, assets and liabilities.

283. The Royal Audit Authority shall carry out annual audit of the Film Commission.

### **Secretariat of the Film Commission**

284. There shall be established a secretariat of the Film Commission headed by an Executive who shall be the legal representative of the Commission.

285. The Executive and other employees of the Film Commission shall be appointed by the Royal Civil Service Commission.

### **Rules and Regulations**

286. For the purpose of this Chapter, the Rules and Regulations shall be developed by the Film Commission and approved by the Ministry.

287. The Ministry shall in consultation with the Ministry of Finance determine remuneration and service conditions of the members of the Film Commission which shall be specified under the Rules and Regulations.

### **Film Development Fund**

288. There shall be established a fund known as the Film Development Fund to support the production of innovative and meaningful films in accordance with Rules and Regulations approved by the Minister.

289. The Film Commission shall manage the Film Development Fund in accordance with the Rules and Regulations approved by the Minister.

290. The corpus of the Film Development Fund that will be managed directly by the Film Commission, shall be constituted through:

- (1) Government funding;
- (2) Donor grants; and
- (3) Existing film endowments;

### **Examination of films**

291. The producer, owner or importer of every film which is intended for public exhibition by any mode of ICT or media within Bhutan shall submit a copy of the film for examination by the Film Commission in such manner and in such format as may be prescribed in the Rules and Regulations approved by the Minister.

292. The Film Commission shall, after examining the film based on pre-defined and transparent criteria set up in the Rules and Regulations:

- (1) Issue a certification approving the film for unrestricted public exhibition;
- (2) Issue a certification approving the film for unrestricted public exhibition, but with an endorsement to the effect that the film shall only be allowed to be seen by a child under the age of twelve years, if that child is accompanied by an adult during the showing of the film;
- (3) Issue a certification approving the film for public exhibition but with an endorsement to the effect that the film shall only be allowed to be seen by adults;

- (4) Direct the applicant to carry out such excisions or modifications in the film as it thinks necessary and re-submit it for examination and approval; or
  - (5) Refuse to approve the film for public exhibition.
293. In the event of the Film Commission deciding on section 292(4) and (5) of this Act, it shall, before making the decision, give the producer or owner of the film a reasonable opportunity of making representations against such recommendation, and it shall give due consideration to the representation made.
294. A copy of the certificate granted or an order refusing to grant a certificate in respect of any film shall be duly recorded by the Film Commission.
295. A copy of any certificate issued by the Film Commission shall be included prominently at the beginning of every copy of the film before it is sent out for public exhibition.

#### **Advertisements and publicity materials**

296. A film intended for public exhibition shall not be advertised to the general public through any medium before the grant of a certificate by the Film Commission.
297. The certificate holder for each film shall also ensure that all advertising material for the film carries the appropriate certification mark as specified in the rules and regulations.

#### **Deposit of copies**

298. A person to whom a certificate is granted under section 292 of this Act shall deposit, free of charge, a copy of the film with the Film Commission at the time of the grant of the certificate.

#### **Film Commission to suspend exhibition of films**

299. Where the Film Commission is satisfied, either on receipt of a complaint from any member of the public or on its own motion, that any film which is publicly exhibited is likely to be detrimental to the public interest or the interests of public order in any area, may, in writing, order the suspension of the screening of the film in that area for such period as may be specified in the order.
300. The effect of any order issued under section 299 of this Act shall be that the film named therein is deemed to be an uncertified film within the area in question.

#### **Appeals**

301. Any person who is aggrieved by an order of the Film Commission may submit an appeal to the Appellate Tribunal.
302. Any appeal under section 301 of this Act shall be filed within ten working days from the date of receipt of the order.



303. The Appellate Tribunal may pass such order as it thinks fit, confirming, modifying or reversing the decision of the Film Commission and may make further orders as to costs in relation to any appeal.

#### **Fees**

304. The Film Commission shall require a person who submits a film for certification or shows to pay fees as may be prescribed in the Rules and Regulations.

305. The Film Commission may also charge such fees as it thinks fit for any other service rendered by it to any person under the provisions of this Act.

## **CHAPTER THIRTEEN: ELECTRONIC GOVERNANCE**

### **Ministry as the lead agency for e-Governance**

306. The Ministry shall be the principal inter-agency body for the design, acquisition and development of e-governance systems and information resources for the benefit of all users.

307. The Ministry shall establish and promote Government wide initiatives to encourage and facilitate the development and enhancement of e-governance services and processes with focus on services to people with special needs and those without access to Internet.

308. The Ministry shall be the lead agency for ensuring information security in the government.

### **E- Government Governance Council**

309. There shall be e-Government Governance structure comprising the following hierarchy:

- (1) Cabinet;
- (2) E-Government Council consisting of government secretaries and secretaries of relevant autonomous agencies;
- (3) E-Government executive committee;
- (4) E-Government review committee; and
- (5) Private sector ICT advisory panel.

310. The e-Government Governance structure shall govern and manage the implementation of e-Government program for the Royal Government of Bhutan.

### **Responsibilities of governmental agencies for e-governance**

311. All Governmental agencies including the Executive, the Legislature and the Judiciary shall:

- (1) Use ICTs to improve its functioning and delivery of public services;



- (2) Make information accessible to the public using ICT facilities;
- (3) Make e-governance accessible to people with special needs;
- (4) Take appropriate action including the conduct of privacy impact assessments, to ensure that sufficient controls are put in place to protect the privacy of sensitive personal information as it implements e-governance programmes; and
- (5) Comply with the policies, standards and guidelines established by the Minister.

312. A governmental agency may:

- (1) Accept the filing of documents, issuing of documents, or require that documents be created or retained in the form of data messages;
- (2) Issue any permit, license or approval electronically; or
- (3) Provide for a manner of payment.

313. Where a governmental agency performs any of the functions referred to in section 210 of this Act, such agency may specify by notice the following requirements:

- (1) The manner and format in which the data messages must be filed, created, retained or issued;
- (2) In cases where the data message has to be signed, the type of electronic signature required; and
- (3) Any other requirements for data messages or payments.

### **Internet Portal**

314. The Ministry shall work with governmental agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.

### **Appropriate personnel needs**

315. The Ministry, in consultation with the Royal Civil Service Commission, shall:

- (1) Analyse necessary personnel needs relating to Government ICT and resource management;
- (2) Oversee the development of curricula, training methods, and priorities necessary for the effective training of such personnel; and
- (3) Ensure that the relevant training needs are appropriately addressed.

### **Modes or methods of encryption**

316. The Ministry may, for secure use of the ICT medium and for promotion of e-governance and electronic commerce, prescribe by way of Rules and Regulations, the modes or methods of encryption.

## **E-Government Report**

317. Each governmental agency shall submit e-governance status report to the Ministry, at the specified times and in the form and manner as prescribed by the Ministry.

## **CHAPTER FOURTEEN: ELECTRONIC COMMERCE**

### **Scope of application**

318. The provisions of this chapter shall apply to any kind of information in the form of a data message used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, contracts and exchanges and storage of information.

### **Legal recognition of data messages**

319. Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic document or data message.

### **Writing**

320. Notwithstanding any law of Bhutan which requires information to be in writing, such requirement shall be met by an electronic document, if the information contained therein is accessible for subsequent reference.

### **Original**

321. Where any law of Bhutan requires information to be presented or retained in its original form, that requirement is met by a data message if:

- (1) There exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form or communicated in a form which can be demonstrated to represent accurately the information originally generated, or communicated as a data message; and
- (2) That information is capable of being displayed or produced to the person to whom it is to be presented.

### **Retention of data messages**

322. Where any law of Bhutan requires that certain documents, records or information be retained, that requirement shall be met by retaining data messages, provided that the following conditions are satisfied:

- (1) The information contained therein is accessible of being used for subsequent reference;
- (2) The data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

- (3) Such information, if any, is retained in a manner which enables the identification of the origin and destination of the data message and the date and time when it was sent or received.

Provided further that this section does not extend to any information which is automatically generated solely for the purpose of enabling the data message to be sent or received.

### **Formation and validity of contracts**

323. Except as otherwise agreed by the parties an offer and acceptance of an offer as required under the Contract Act of the Kingdom of Bhutan for the formation of a contract may be expressed by means of data messages.
324. Where a data message is used in the formation of a contract, such contract shall not be denied validity or enforceability on the sole ground that a legal stamp has not been affixed or has not been attested by witnesses.

### **Attribution of data messages**

325. A data message shall be deemed to be that of the originator if it was sent by the originator.
326. As between the originator and the addressee, a data message shall be deemed to be that of the originator if it was sent:
  - (1) By a person who had the authority to act on behalf of the originator in respect of that data message;
  - (2) With the originator's full and informed consent, unless the originator had handed over authority to consent, either temporarily or permanently due to diminished personal capacity, such as mental illness or disability; or
  - (3) By an information system programmed by, or on behalf of, or with the full and informed consent of, the originator to operate automatically.
327. As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose.
328. Section 327 of this Act, does not apply when the addressee had received notice from the originator that the data message is not that of the originator and had reasonable time to act accordingly.



329. If a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee shall be entitled to regard the data message received as being what the originator intended to send, and to act on that assumption.
330. If the addressee knew or should have known had the addressee exercised reasonable care or used any agreed procedure that the transmission resulted in an error in the data message as received, the addressee is not so entitled to act on that assumption.
331. The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that the originator duplicates another data message and the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

### **Acknowledgement of receipt**

332. If the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by any:
- (1) Communication by the addressee, sent by an automated means or otherwise; or
  - (2) Such conduct of the addressee as may be sufficient to indicate to the originator that the data message has been received.
333. If the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.
334. If the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator may:
- (1) Give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and
  - (2) If the acknowledgement is not received within the time specified in sub-section (1), upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights that the originator may have under existing law.

335. If the originator receives the addressee's acknowledgement of receipt, it is presumed that the addressee received the related data message but the presumption does not carry an irrefutable implication that the data message in question corresponds to the message received.

### **Time of dispatch and receipt of data messages**

336. Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when the data message enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

337. Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:

- (1) If the addressee has designated an information system for the purpose of receiving data messages, receipt occurs;
- (2) At the time when the data message is time-stamped by the designated information system; or
- (3) If the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is accessed or retrieved by the addressee.

### **Variation by agreement**

338. As between parties involved in generating, sending, receiving, storing or otherwise processing electronic document or data messages, and except as otherwise provided, the provisions of sections 325 to 337 of this Act, may be varied by agreement.

### **Admissibility and evidential weight of data messages**

339. In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

- (1) On the sole ground that it is an electronic document or data message; or
- (2) If it is the best evidence that the person adducing it could reasonably be expected to obtain, on the sole grounds that it is not in its original form.

340. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

341. For the purposes of section 340 of this Act, the integrity of the information contained in a document is maintained if the information has remained complete and unaltered, except for:

- (1) The addition of any endorsement; or



- (2) Any immaterial change, which arises in the normal course of communication, storage or display.

## **CHAPTER FIFTEEN: ELECTRONIC SIGNATURE**

### **Scope of application**

342. All the provisions of this chapter shall apply where electronic signatures are used.

### **Signature**

343. Notwithstanding any law which requires a physical signature of a person that requirement is met by an electronic signature.

### **Equal treatment of signature technologies**

344. Nothing in this chapter, except section 346 of this Act, shall be applied to exclude, restrict or deprive of legal effect any method of creating an electronic signature which satisfies the requirements, or otherwise meets the requirements of the applicable law.

345. Section 344 of this Act, does not limit the ability of any person to adduce evidence of non-reliability of an electronic signature.

### **Compliance with requirement for a signature**

346. An electronic signature, for the purpose of this Act, shall have the following minimum features:

- (1) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
- (2) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;
- (3) Any alteration to the electronic signature, made after the time of signing, is detectable; and
- (4) Where the purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

### **Conduct of the Certification Service Provider**

347. Where a Certification Service Provider provides services to support an electronic signature which may be used for legal effect as a signature, the Certification Service Provider shall:

- (1) Issue certificates for electronic signature;

- (2) Act in accordance with representations made by it with respect to its policies and practices;
- (3) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it which are relevant to the certificate;
- (4) Provide reasonably accessible means which will enable a party placing reliance on the certificate to ascertain from the certificate:
  - (a) The identity of the certification service provider;
  - (b) That the signatory who is identified in the certificate had control of the signature creation data at the time when the certificate was issued; and
  - (c) That signature creation data were valid at or before the time when the certificate was issued;
- (5) Provide reasonably accessible means which shall enable a party placing reliance on the certificate to ascertain, where relevant, from the certificate or otherwise:
  - (a) The method used to identify the signatory;
  - (b) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;
  - (c) That the signature creation data are valid and their integrity has not been compromised;
  - (d) Any limitation on the scope or extent of liability stipulated by the certification service provider;
  - (e) Whether a timely suspension or revocation service is offered; and
  - (f) Use trustworthy systems, procedures and human resources in performing its services.

348. The Ministry may, by Rules and Regulations, consistent with recognised international standards and rules of private international law, determine the conduct of Certification Service Provider under section 347 of this Act.

349. The Ministry may also advise the Government on legally acceptable alternative electronic identification for correspondence or certification in the absence of the electronic signature protocol.

350. A certification service provider shall bear the legal consequences of failure to satisfy the requirements of section 343 of this Act and shall be held liable for damage caused to a person, who reasonably relies on a certificate issued by the certification service provider, unless the certification service provider is able to show to the satisfaction of the court that certification service provider has not acted negligently.

### **Regulation of Certification Service Provider**

351. The Ministry may, by an order appoint a Controller of Certification Service Provider for the purposes of registering Certification Service Provider.

352. The Controller may suspend or revoke a registration, if satisfied that the Certification Service Provider has failed or ceases to meet any of the requirements, conditions or restrictions subject to which registration was granted.
353. The Ministry may by Rules and Regulations specify:
- (1) The rights and obligations of certification products and services providers;
  - (2) The manner in which the Controller must administer and supervise compliance with the obligations;
  - (3) The procedure pertaining to the granting, suspension and revocation of accreditation;
  - (4) Fees payable;
  - (5) Security requirements;
  - (6) Accreditation of certificate issued outside Bhutan; and
  - (7) Any other relevant matter which is necessary for the implementation of this chapter.

### **Conduct of the signatory**

354. Where signature creation data is used to create a signature that has legal effect, the signatory shall:
- (1) Exercise reasonable care to avoid unauthorised use of the signature creation data; and
  - (2) Without undue delay, utilise means made available by the certification service provider pursuant to section 346 of this Act, or otherwise use reasonable efforts, to notify any person who may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature, if the:
    - (a) Signatory knows that the signature creation data have been compromised; or
    - (b) Circumstances are known to the signatory which could give rise to a substantial risk that the signature creation data may have been compromised.
355. Where a certificate is used to support the electronic signature, the signatory shall exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory which are relevant to the certificate throughout its entitlement life cycle or which are to be included in the certificate.

356. A signatory shall bear all legal consequences if he or she fails to satisfy the requirements of section 354 of this Act.

### **Conduct of the relying party**

357. A party which relies on any certificate referred to in this chapter shall bear the legal consequences of its failure:
- (1) To take reasonable steps to verify the reliability of an electronic signature; or
  - (2) Where an electronic signature is supported by a certificate, to take reasonable steps to verify the:
    - (a) Validity, suspension or revocation of the certificate; and
    - (b) Existence of any limitation with respect to the certificate.

### **Recognition of foreign certificates and electronic signatures**

358. A certificate issued outside Bhutan shall have the same legal effect in Bhutan as a certificate issued in Bhutan, if it meets the requirements of this Act, Rules and Regulations made thereunder.
359. Where, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, such agreement shall be recognised as sufficient for the purposes of cross-border recognition.
360. In any proceedings involving an electronic signature registered or accredited in Bhutan, it shall be presumed that:
- (1) The electronic signature is the signature of the person to whom it correlates; and
  - (2) The electronic signature was affixed by that person with the intention of signing or approving the electronic document unless the person relying on the electronic document knows or has noticed defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

### **Variation by agreement**

361. As between parties signing and relying on an electronic signature, and except as otherwise provided, the provisions of this chapter may be varied by agreement.

## **CHAPTER SIXTEEN: CONSUMER PROTECTION**

### **Quality of service**

362. An ICT and Media facility and service provider shall make reasonable endeavour to ensure that their facilities and services are:
- (1) Reliable;
  - (2) Provided with due care and professional skills; and

- (3) Rendered in accordance with the standards reasonably expected of a competent provider of those ICT and Media facilities and services.

363. The Authority, may prescribe quality standards for the provision of ICT and Media facilities and services.

### **Information provision**

364. It shall be the duty of vendors to provide consumers with sufficient information to be able to make an informed choice in transactions conducted online.

365. All of the information so provided in relation to transactions falling within the purview of this chapter shall be:

- (1) Clearly presented in Dzongkha or English;
- (2) Truthful;
- (3) Conspicuous and easily accessible on vendors' websites at appropriate stages of consumer's decision making, particularly before a consumer confirms transaction or provide any personal information; and
- (4) Capable of being retained or printed by consumer.

### **Matters for consumer code**

366. The Authority shall prepare a consumer code which shall include:

- (1) Meeting consumer requirements;
- (2) The handling of customer complaints and disputes and procedures for the compensation of customers in case of a breach of a consumer code;
- (3) The protection of consumer information;
- (4) The provision of information to customers regarding services, rates and performance;
- (5) Provisioning and fault repair of services;
- (6) The advertising or representation of services;
- (7) Customer charging, billing, collection and credit practices; and
- (8) Any other matter of concern to consumers.

### **Contract formation and fulfilment**

367. A vendor shall take reasonable steps to ensure that the full and informed agreement of consumers who enter into contracts with them is obtained prior to the finalisation of the contract including reasonable and meaningful opportunity to amend or cancel any order being placed, before the order is accepted and processed.

368. A vendor shall not hold consumers liable for any charges related to a transaction in the circumstances:

- (1) Where the transaction was not authorised by the consumer;
- (2) Where the product delivered was materially different from that described by the vendor on the website;
- (3) Where the vendor failed to provide material information about the product;
- (4) Where the product was not delivered in the time specified, or in accordance with the conditions stated in the terms governing the transaction when it was entered into;
- (5) Where the consumer was not offered an adequate and reasonable opportunity to cancel a transaction which was inadvertently entered into while acting reasonably and in good faith; or
- (6) Where the product was damaged irreparably in transit by the vendor's carrier, or by a third party, in circumstances in which the consumer could not reasonably be expected to accept possession of the goods relating to the transaction.

369. For the purpose of section 368 of this Act, a vendor shall within a reasonable time, refund any payments made by the consumer including, when applicable, any charges which the consumer may have paid to return the damaged products, if they were damaged in transit before reaching the consumer.

370. A vendor shall maintain effective control to ensure that transactions are billed and completed as agreed, to promptly rectify any mistakes that may occur in transaction records, and to ensure that consumers are notified promptly of any such correction.

### **Redressal**

371. An ICT and Media facility or service provider and vendor shall provide users or consumers with access to fair, timely and effective means to resolve problems or disputes arising from, or in relation to, any transaction that they may enter into, including advocacy and awareness.

372. An ICT and Media facility or service provider and vendor shall offer an internal complaints-handling process which:

- (1) Is easily accessible both online and offline;
- (2) Is available to users or consumers free of charge;
- (3) Is easy to use;
- (4) Acknowledges complaints within ten working days of receipt and endeavours to resolve or address these complaints within thirty days of acknowledgment;

- (5) Records and monitors complaints; and
- (6) Is capable of being audited by a professionally qualified independent third party.

### **Complaints to the Office of Consumer Protection**

373. A person who is dissatisfied with the decision of the ICT and Media facility or service provider under section 371 of this Act, may file a complaint to the Authority and subsequently to the Office of Consumer Protection, in accordance with the Consumer Protection Act of Bhutan.

### **Applicability of foreign law**

374. The protection provided to consumers in this Chapter is applicable irrespective of the fact that the agreement specifies the application of foreign laws.

### **Non-exclusion**

375. Any provision in an agreement which excludes any rights provided for in this Chapter is null and void with regard to that provision.

## **CHAPTER SEVENTEEN: PROTECTION OF ONLINE OR OFFLINE PRIVACY**

### **Privacy**

376. An ICT and Media facility or service provider and vendor shall respect and protect the privacy of personal information, including sensitive personal information which they receive from the users or consumers.

377. An ICT and Media facility or service provider and vendor shall put in place a privacy policy and make this policy easily accessible from the website and from any other place from where personal information, including sensitive personal information is either requested or collected.

378. The privacy policy shall include the:

- (1) Details of the various types and sources of information being received, collected and maintained online, the purposes for which such information is collected, how the information may be used, and to whom the information may be disclosed;
- (2) Details of the options available to users or consumers regarding the collection, use and disclosure of the personal information, how they may exercise and, where appropriate, change these options, and the implications of each of the options;
- (3) Details on how users or consumers may review and, when necessary, have such information amended or removed; and



- (4) Details on when the website uses “cookies,” or any spyware, how and why they are used and the consequences, if any, of the refusal by any user or consumer to accept a cookie or spyware.
379. An ICT and Media facility or service provider and vendor shall limit the collection, use and disclosure of personal information, to that which a reasonable person would consider appropriate in the circumstances.
380. The information collected shall be stored and used for the intended purpose only and may be removed or withdrawn upon the request of the users.
381. An ICT and Media facility or service provider and vendor shall not disclose personal information, including sensitive personal information to affiliates or third parties for purposes other than the transactions unless specifically and expressly authorised to do so by the user or consumer in advance, through a clearly worded ‘opt-in’ process.
382. When ICT and Media facility or service provider and vendor transfer personal information, including sensitive personal information to third parties, they shall remain responsible for the protection of such information.
383. An ICT and Media facility or service provider or vendor shall, pursuant to section 378 of this Act, ensure through contractual, legal, or other means, that all third parties to whom the information is transferred comply with the privacy provisions of this chapter.

#### **Security of payment and personal information**

384. An ICT and Media facility or service provider and vendor shall maintain effective controls to protect the integrity and confidentiality of payment and other personal information, including sensitive personal information that user or consumer may provide.
385. Any security mechanism used for this purpose shall be consistent with current global industry standards and other existing national laws, and appropriate to the type of information collected, maintained, or transferred to third parties.
386. An ICT and Media facility or service provider and vendor shall ensure that all third parties who are involved in transactions and have access to personal or payment information comply with section 385 of this Act.

### **Unsolicited e-mail**

387. An e-mail message which an ICT and Media facility or service provider or vendor may send shall prominently display a return e-mail address and shall provide in plain language, a simple procedure by which users or consumers can notify the concerned ICT and Media facility or service provider or vendor that they do not wish to receive such messages in the future.

### **Communications with children**

388. A communication addressed to children, or likely to be of particular interest to children, shall be age-appropriate, and shall not exploit the credulity, lack of experience, or sense of loyalty of children.

389. An ICT and Media facility or service provider and vendor shall take all reasonable steps to prevent offensive communications being delivered to children and to prevent the possibility of children being drawn into conducting business transactions of any kind.

390. An ICT and Media facility or service provider and vendor shall not collect or disclose children's personal information without the express and verifiable consent of their parents or guardians.

391. Advertisements in all forms aimed at taking advantage of the vulnerabilities of the children shall not be permitted.

## **CHAPTER EIGHTEEN: DOMAIN NAMES**

### **Registrar of domain names**

392. The Minister may designate a relevant agency to be known as the Bhutan Network Information Centre to register domain names and act as registrar of domain names in Bhutan.

393. The Bhutan Network Information Centre shall ensure effective protection of the registered domain names both at national and international levels.

394. The Bhutan Network Information Centre shall function in accordance with the Rules and Regulations approved by the Minister.

### **Functions of Bhutan Network Information Centre**

395. The Bhutan Network Information Centre shall:

- (1) Administer and manage the domain name with the country code .bt;
- (2) Ensure compliance with international best practice in the administration of domain name;
- (3) Issue license and regulate registries;

(4) Deal with any matter incidental thereto.

396. The Bhutan Network Information Centre shall when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to the domain name.

#### **Disputes involving domain name violations**

397. The Bhutan Network Information Centre shall resolve any dispute that may arise involving a domain name with country code .bt.

398. Notwithstanding anything contained in section 393 of this Act, any such dispute involving any other generic domain name, may be resolved as per the domain name dispute resolution policy related to such domain names.

399. In any civil action involving the registration, trafficking, or use of a domain name under this Chapter, a Court may order the forfeiture or cancellation of the domain name, the transfer of the domain name to the owner of the trade mark or to the Bhutan Network Information Centre.

400. The terms “trades in” and “traffics in” refer to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

#### **Civil actions against domain name violators**

401. The owner of a trade mark may file a civil action against the owner of the domain name, if:

- (1) The domain name violates any right of the owner of a registered or protected trade mark; or
- (2) A competent Court finds that the owner of the registered or protected trade mark is not able to obtain relief over a person who would have been a defendant in a civil action under this chapter.

## **CHAPTER NINETEEN: INTERNET SERVICE PROVIDERS, THEIR OPERATIONS AND LIABILITY**

### **Hosting**

402. An internet service provider shall be liable in accordance with general laws of Bhutan for any content produced or created by them, and which may be made available for public access.

403. An internet service provider shall not be liable for merely storing content produced or created by any third-party, and which may be made available for public access, provided:

- (1) They have no knowledge of any illegality in relation to such content;
- (2) They are not aware of any facts or circumstances from which such illegality can be deciphered or inferred;
- (3) Upon obtaining such knowledge or awareness, they act expeditiously to remove the content in question or to disable public access to it; or
- (4) They do not possess the technical knowledge or ability, or cannot reasonably be expected having regard to all the circumstances, to block public access to such content.

### **Provision of access and caching**

404. An internet service provider shall not be liable for any content produced or created by a third party which is merely transmitted or routed through the facility or system of the internet service provider for the purpose of enabling the public to access such content over the internet, provided the internet service provider does not:

- (1) Initiate the transmission;
- (2) Select the receiver of the transmission; and
- (3) Select or modify the information contained in the transmission.

405. The acts of transmission, routing and of provision of access referred to in section 404 of this Act, include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission over the internet, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

### **Powers of the Court**

406. Sections 404 and 405 of this Act shall not affect the jurisdiction of the Court or of the Authority to require the internet service provider to terminate or prevent an infringement.

### **No general obligation to monitor**

407. An internet service provider shall not be under any general obligation, when providing the services, to monitor the information which they transmit or store, or a general obligation to actively seek facts or information indicating any illegal activity.

Provided that the internet service provider shall promptly inform the Authority of an illegal activity once it comes to its knowledge.

## Notice and take down

408. A party who believes that use of the material is not authorised by the copyright owner or the agent may, by notification, communicate to internet service provider of any alleged or suspected infringement of copyright.
409. A notification under section 408 of this Act, to be effective shall be a written or electronic data communication provided to the internet service provider or the designated agent which includes:
- (1) A physical or electronic signature of a person authorised to act on behalf of the owner of an exclusive right that is allegedly infringed;
  - (2) Identification of the work whose copyright is alleged or suspected to have been infringed;
  - (3) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and which is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the internet service provider to locate the material;
  - (4) Information reasonably sufficient to permit the internet service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
  - (5) A signed statement that the complaining party believes that use of the material in the manner complained of is not authorised by the copyright owner or the agent; and
  - (6) A signed statement that the information in the notification is accurate, and under penalty of perjury and that the complaining party is authorised to act on behalf of the owner of an exclusive right that is allegedly infringed.
410. An internet service provider shall not be liable to any person for any claim based on the disabling of access to, or removal of material or activity pursuant to section 409 of this Act, in good faith.
411. Section 410 of this Act shall not apply to material residing at the direction of a subscriber of the internet service provider on a system or network controlled or operated by or for the internet service provider, unless the internet service provider takes reasonable steps promptly to notify the subscriber that the material has been removed or access disabled.

412. An internet service provider shall, upon receipt of a counter notification to section 404 of this Act, promptly provide the person who provided the notification with a copy of the counter notification, and inform the person that it will replace the removed material or cease disabling access to it within ten working days.
413. An internet service provider shall replace the removed material and cease disabling access to it within not less than ten working days following receipt of the counter notice.

Provided that the internet service provider receives notice stating that the party under section 408 of this Act, has filed an action seeking a Court order to restrain the subscriber from engaging in infringing activity relating to the material on the internet service provider's system or network.

414. A counter notification to be effective shall be a written communication provided to the internet service provider or the designated agent that includes:
- (1) A physical or electronic signature of the subscriber;
  - (2) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
  - (3) A signed statement, under penalty of perjury and that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
  - (4) The subscriber's name, address, and telephone number.

## **CHAPTER TWENTY: CYBER SECURITY**

### **Protection of personal rights and security**

415. All forms of personal rights and security accorded to the citizens shall be protected in the cyber world.

### **Blocking, interception or monitoring or decryption of any information**

416. The Minister may, by a warrant of the court, direct any agency or Department or ICT and Media facility or service provider to block access by the public or cause to be blocked, intercepted, monitored or decrypted any information generated, transmitted, received or stored in any ICT system, apparatus including computer or computer network, if satisfied that it is necessary or expedient:

- (1) In the interest of the sovereignty, security, harmony and defence of Bhutan or friendly relations with foreign States;
- (2) In the interest of public order or for preventing incitement to the commission of any cognizable offence; and
- (3) For investigation of any offence under this Act.

417. The procedure and safeguards for blocking access by the public, interception or monitoring or decryption may be carried out in accordance with the Rules and Regulations issued by the Ministry;

Provided that the blocking for access by the public shall remain in force until such time they are deemed no longer to pose a threat.

#### **Interference with data**

418. A person shall not intentionally or without the authority interfere with data so as to cause the data to be modified, destroyed or otherwise rendered in effective.

#### **Power to authorise, monitor and collect traffic data or information**

419. The Minister, to enhance cyber security and for identification, analysis and prevention of intrusion or spread of computer contaminant may, by a warrant of the court, authorise any agency or Department to monitor and collect traffic data or information generated, transmitted, received or stored in any computer or computer network.

420. The procedure and safeguards for monitoring and collecting traffic data or information shall be as may be prescribed in the rules and Regulations by the Ministry.

#### **Critical information infrastructure**

421. The Ministry may, in consultation with the Authority, declare any ICT and media infrastructure as Critical Information Infrastructure.

422. For the purpose of section 421 of this Act, “Critical Information Infrastructure” means the ICT and media infrastructure, the incapacitation or destruction of which, shall have debilitating impact on national security, economy, public health, social welfare or safety.

#### **Bhutan Computer Incidence Response Team**

423. The Government shall by directive establish an agency to be called the Bhutan Computer Incidence Response Team which shall serve as the national agency to coordinate cyber security activities and be a central point of contact on all cyber security matters pertinent to national security in the country.

424. The Bhutan Computer Incidence Response Team shall establish policies and procedures required to implement its functions under this Act.

## **CHAPTER TWENTY ONE: DATA PROTECTION**

### **Principles governing collection of data electronically and its disclosure**

425. A person shall obtain the express written permission of the subject for the collection, collation or processing of any personal information, unless permitted or required to do so by law.
426. A person shall not disclose any of the personal information held by it to a third party, unless required or permitted by law or specifically authorised to do so in writing by the concerned person.
427. The person possessing, dealing or handling any personal data, including sensitive personal data or information shall delete or destroy all personal information which has become obsolete.

Provided that the person may use that personal information for statistical purposes as long as the profiles or statistical data cannot be linked to any person by a third party.

### **Failure to protect data**

428. Where any person possessing, dealing or handling any personal data including sensitive personal data or information in a computer, computer network, data, computer database or software which the person owns, controls or operates is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such person shall be liable to pay compensation to the victim for the damage caused, as determined by the Court.

### **Unlawful Disclosure of data or information**

429. A person having secured access to any material containing personal data or information about another person, with the intent to cause or knowing that it is likely to cause wrongful loss or wrongful gain, discloses such data or information without the consent of the person concerned or in breach of a lawful contract, shall be liable for offence of misdemeanour and shall pay compensation to the victim for the damage caused, as determined by the Court.

### **Unauthorised downloading, copying and extraction of data**

430. A person, who without lawful permission of the owner or any other person who is in charge of a computer or computer network, downloads, copies or extracts any data, computer database or information from the computer or computer network shall be liable for offence of misdemeanour and shall pay compensation to the victim for the damage caused, as determined by the Court.



### **Tampering with computer source code**

431. Whoever knowingly or intentionally conceals, destroys, or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme or computer network, shall be liable for offence of felony of fourth degree and shall pay compensation to the victim for the damage caused, as determined by the Court.
432. For the purposes of section 431 of this Act, “computer source code” means the listing of programmes, computer commands, design and layout and programme analysis.

### **Breach of confidentiality and privacy**

433. If any person, who secures or discloses such data, computer database, information or other material without the consent of the person concerned, or in contravention of the provisions of this Act or other subsidiary legislations framed thereunder, shall be liable for offence of misdemeanour, and shall pay compensation to the victim for the damage caused, as determined by the Court.

## **CHAPTER TWENTY TWO: OFFENCES AND PENALTIES**

### **Facilities and services without a license or permit**

434. A person who owns or operates any ICT and Media facility or services without a valid license shall be guilty for offence of misdemeanour and all facilities, apparatus, equipment, device, thing or matter used in the commissioning of the offence shall be liable for forfeiture.
435. A person who publishes a newspaper without a license under this Act shall be liable for offence of misdemeanour.
436. A person who keeps, maintains, operates, uses or knowingly allows to be used any place which provides ICT and Media facilities and services without a license shall be liable for offence of misdemeanour and shall be fined an amount as may be prescribed by the Authority in the Rules and Regulation made thereunder.

### **Illegal transfer of license**

437. A person involved in effecting any purported transfer of a license other than in accordance with section 150 of this Act, shall be guilty of the offence and liable for action in accordance with the Rules and Regulations developed by the Authority.

### **Keeping or using printing press**

438. If a person keeps or uses a printing press in contravention with section 237 of this Act, such person shall be liable for offence of misdemeanour.
439. Notwithstanding section 438 of this Act, the Authority may impose a fine as may be prescribed in the Rules and Regulations developed by the Authority.

### **Sale of book or newspaper declared detrimental to Bhutan**

440. Where a declaration is made under section 256 of this Act, any person who imports, sells or distributes, or possesses for sale, within Bhutan a copy of such book or newspaper shall be guilty of the offence of smuggling as per the Penal Code of Bhutan.

### **Facilitating proscribed services**

441. A person shall be liable for felony of fourth degree, if he or she within Bhutan knowingly:
- (1) Supplies, or offers to supply, any goods, equipment or material for or in connection with the operation or day-to-day functioning of the proscribed service;
  - (2) Supplies, or offers to supply, directly or indirectly, any programmes or other software intended to be included in the programmes transmitted by the proscribed service;
  - (3) Advertises, by means of any programmes transmitted by the proscribed service, any goods or services; or
  - (4) Advertises or publicises through any means to the general public in Bhutan details of any programmes to be transmitted by the proscribed service.

### **Using radio communication station or radio communication apparatus**

442. A person shall be liable for offence of misdemeanour, if he or she:
- (1) Uses, or causes or permits any radio communication station or radio communication apparatus to be used in contravention of National Radio Rules and Regulations; or
  - (2) Sells, offers or advertises for letting on hire of apparatus in contravention of a notice of the Authority.
443. Notwithstanding anything contained under section 442 of this Act, the Authority may impose a fine as may be prescribed in the Rules and Regulations.

### **Use of Spectrum**

444. A person who uses spectrum in contravention with sections 196 and 197 of this Act, shall be liable for offence of misdemeanour.
445. Notwithstanding anything contained under section 444 of this Act, the Authority may impose a fine as may be prescribed in the Rules and Regulations.

### **Non-compliance with direction**

446. A person who does not comply with the direction issued under sections 416 and 419 of this Act with regard to blocking for access by the public and monitoring suspicious traffic data based on court warrant, shall be guilty of an offence liable to conviction of misdemeanour.

### **Unauthorised interception or access to Critical Information Infrastructure**

447. A person who intercepts or secures access or attempts to secure access to a “Critical Information Infrastructure” without authority shall be liable for offence of fourth degree felony.

### **Indemnification for damages caused to public ICT infrastructure**

448. A person who knowingly cause or intend to cause damages to ICT and Media facilities resulting in service disruption and has impact on service providers and clients, shall be liable for offence of misdemeanour and the person shall repair the damages so caused.

### **Deliberate interference**

449. A person who intentionally uses an apparatus including a non-radio communication apparatus to interfere with any radio communication shall be liable for offence of misdemeanour and the Court may order the defaulter to pay compensation to the other party.
450. A person who intentionally or without the authority interferes with data under section 416 of this Act, shall be liable for offence of misdemeanour and the Court may order the defaulter to pay compensation to the other party.
451. A person who intercepts or monitors or decrypts any information or causes any information to be intercepted or monitored or decrypted, contrary to section 416 and 418 of this Act, shall be liable for offence of misdemeanour.

### **Exhibition of prohibited films**

452. A person shall be liable for offence of petty misdemeanour, if he or she:

- (1) Exhibits publicly or allows the public exhibition on any premises any film which has not been certified by the Film Commission;

- (2) Exhibits publicly or allows the public exhibition on any premises to any person who is not an adult any film which has been endorsed to the effect that the film shall only be allowed to be seen by adults;
- (3) Exhibits publicly or allows the public exhibition on any premises to any child or young person under the age of twelve who is not accompanied by an adult any film which has been endorsed to the effect that the film shall only be allowed to be seen by a child under the age of twelve years if that child is accompanied by an adult during the showing of the film; or
- (4) Exhibits publicly or allows the public exhibition on any premises any film which has, without lawful authority, been altered, modified or tampered with in any way after the film has been certified by the Film Commission.

453. Notwithstanding anything contained under section 452 of this Act, the Film Commission may impose a fine as may be prescribed in the Rules and Regulations.

454. A person who exhibits, or assists in the exhibition, or allows the use of the premises for the exhibition, of the film in respect of which an order under section 295 of this Act, has been made shall be guilty of the offence of breach of public order and tranquillity as per the Penal Code of Bhutan.

#### **Non- compliance with prohibitory orders**

455. A person shall be liable for offence of misdemeanour, if he or she wilfully disobeys the order under section 299 of this Act, by:

- (1) Organising or taking part in the performance prohibited or in any performance substantially similar to the performance prohibited;
- (2) Assisting in the staging of such performance;
- (3) Remaining present as a spectator during the whole or part of such performance; or
- (4) Being the owner or occupier, or for the time being in control, of any premises, using it, or allowing it to be used, for any such performance.

456. If the act of disobedience under section 455 of this Act, occurs under aggravated circumstances, the person shall be liable for offence of felony of fourth degree.

#### **Advertisements and publicity**

457. Any person who issues an advertisement or other publicity material in breach of the provisions of sections 296 and 297 of this Act shall be liable for offence of petty misdemeanour.

### **Unauthorised access to computer material**

458. A person shall be guilty of the offence of unauthorised use of computer material, if he or she:

- (1) Knowingly or intentionally causes a computer of another person to perform any function with intent to secure access to any programme or data held in that computer; and
- (2) Secures, or intends to secure, unauthorised access to the computer.

459. The offence of unauthorised use of computer material shall be a misdemeanour and the person shall be liable to pay compensation to the victim for the damage caused, as determined by the Court.

### **Unauthorised access to computers, computer systems, networks, computer data, content data and traffic data**

460. A person accessing computers, computer systems, networks, computer data, content data and traffic data, with intent to cause, or knowing that it is likely to cause, wrongful loss or gain or damage to the public or to any person, causes a stoppage or denial of service from a computer or computer system, or network deletes or alters any information or computer data residing in a computer, computer system or network or diminishes its value or utility or affects it injuriously by any means, or Intentionally introduces or causes to be introduced, any computer contaminant into any computer, computer system or network, commits the offence of tampering with computer material liable under the Penal Code of Bhutan.

461. An offence of unauthorized access to computers, computer systems, networks and computer data, content data and traffic data shall be an offence of felony of fourth degree and the person shall be liable to pay compensation to the victim for the damage caused, as determined by the Court.

### **Dishonestly receiving computer material or data**

462. A person who dishonestly receives or retains any computer material or data knowing or having reason to believe the same to be stolen computer material or data shall be guilty of an offence of possession of stolen property as per the Penal Code of Bhutan.

### **Identity theft**

463. A person who, fraudulently or dishonestly makes use of the electronic signature, number, password, code or any other unique identification feature of any other person shall be liable for offence of misdemeanour and may be required to pay compensation to the victim for the damage caused, as determined by the Court.



### **Cheating by impersonation using a computer**

464. A person who, by means of any ICT facility or apparatus or computer cheats by impersonating shall be liable for offence of felony of fourth degree.

### **Wrongful communication**

465. If a person knowingly communicates, directly or indirectly, a number, code, password or other means of access to a computer to any person other than a person to whom that person is duly authorised to communicate shall be liable for offence of misdemeanour and may be required to pay compensation to the victim for the damage caused, as determined by the Court.

### **Publishing or transmitting obscene communications**

466. A person, who knowingly publishes, distributes or transmits or causes to be published, distributed or transmitted, by means of an ICT apparatus, facility, service or system, any obscene communication or material shall be liable for offence of felony of fourth degree, and be liable to pay compensation to the victim for the damage caused, as determined by the Court.

467. If a person with the intent or knowledge permits the ICT apparatus, facility, service or system under the person's control to be used for publishing, distributing or transmitting or caused to be published, distributed or transmitted any obscene communication or material shall be seen to have abetted such an offence and shall be liable as per the Penal Code of Bhutan.

Provided that a person shall not be liable solely for providing access or connection, including related capabilities which are incidental to providing access or connection, to or from an ICT facility, system or network over which the person has no control.

468. An employer shall not be held liable under section 467 of this Act for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of employment or agency and the employer has knowledge of, authorises, or ratifies the employee's or the agent's conduct.

### **Publishing or transmitting obscene communication depicting children**

469. A person shall be liable for offence of felony of third degree, if he or she:



- (1) Publishes, distributes or transmits or causes to be published, distributed or transmitted any obscene communication or material which depicts children engaged in sexually explicit act or conduct;
- (2) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any form depicting children in obscene or indecent or sexually explicit manner;
- (3) Facilitates abusing children using any ICT facilities or services; or
- (4) Records in any form, own abuse, or that of others pertaining to sexually explicit act with children.

### **Violation of bodily privacy**

470. A person who, intentionally or knowingly captures the image of a private body part of another person without the person's consent shall be liable for offence of misdemeanour and be liable to pay compensation to the victim for the damage caused, as determined by the Court.

### **Online harassment**

471. A person who knowingly makes, by means of an ICT device, apparatus or system, any harassing communication in any form shall be guilty of the offence of online harassment liable for offence of misdemeanour and may be required to pay compensation to the victim for the damage caused, as determined by the Court.

472. For the purpose of section 471 of this Act, 'harassment' shall include persistent conduct which is calculated, or likely, to cause insult, injury, intimidation, enmity, obstruction, stalking, annoyance, distress, or extreme irritation to any person, making use of such ICT device, apparatus or facility or system.

473. The owner of an ICT facility or system who knowingly permits the facilities to be used for online harassment purpose shall be guilty of abetting such an offence and shall be liable as per the Penal Code of Bhutan.

Provided that a person shall not be liable solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing such access or connection.

474. An employer shall not be held liable under section 473 of this Act, for the action of an employee or agent unless the employee's or agent's conduct is within the scope of employment or agency and the employer has knowledge of, authorises, or ratifies the employee's or the agent's conduct.

### **Online gambling**

475. A person who knowingly engages in betting or wagering with the use of an ICT facility or ICT service shall be guilty of the offence of gambling under the Penal Code of Bhutan.

### **Cyber terrorism**

476. A person shall be guilty of the offence of cyber terrorism, if the person with intent to threaten sovereignty, security and harmony of Bhutan, or the interests of friendly relations with foreign states, disrupt public order, or to strike terror in the people:

- (1) Deny access to any person authorised to access any computer or computer network;
- (2) Attempt to penetrate or access any computer or computer network without authorisation or exceeding authorised access; or
- (3) Introduces or causes to introduce any computer contaminant.

477. A person who commits or conspires to commit an act in section 476 of this Act shall be liable for offence of felony of first degree.

### **Fraudulent use of public ICT system**

478. A person who dishonestly obtains a service provided by means of a public ICT system with intent to avoid payment of any charge applicable to the provision of the service shall be liable for offence of petty misdemeanour.

479. A person who uses any authorisation code, password or any other restricted form of electronic access information or device for the purpose of obtaining a service provided by means of a public ICT system with intent to avoid payment of any charge applicable to the provision of the service shall be liable for offence of petty misdemeanour.

### **Interception and disclosure of messages**

480. A person shall be guilty of the offence of eavesdropping as per the Penal Code of Bhutan, if a person engaged in the operation of a public ICT system who, otherwise than in the course of duty:

- (1) Intentionally intercepts a message sent by means of that system; or
- (2) Where a message so sent has been intercepted, intentionally discloses to any person the contents of that message.

481. A person engaged in the operation of a public ICT system who, otherwise than in the course of duty under this Act intentionally discloses to any person the contents of any statement of account specifying the ICT services provided for any other person by means of that system shall be liable for offence of misdemeanour, and may be required to pay compensation to the victim for the damage caused, as determined by the Court.

### **Misleading messages and interception and disclosure of messages**

482. Any person who by means of a public ICT system, sends or attempts to send, any message which, to the person's knowledge, is false or misleading with the intent to prejudice the efficiency of any emergency services, cause alarm or endanger the safety of any person or of any vehicle, vessel, aircraft, or spacecraft shall be guilty of an offence and liable for offence of felony of fourth degree, or impose a fine as may be determined by the court or with both.

483. A public servant shall be guilty of an offence of official misconduct as per the Penal Code of Bhutan, if he or she, except as permitted by law, either:

- (1) Uses any ICT apparatus, ICT facility or ICT system with intent to obtain information as to the contents, sender or addressee of any message which neither the person using the apparatus, facility or system nor any person on whose behalf the person is acting is authorised by the Authority to receive; or
- (2) Compiles any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to the public servants knowledge but for the use of an ICT apparatus, ICT facility or ICT system.

### **Prohibition of Billboard and notices**

484. A person who without due authority affixes or attempts to affix any billboard, advertisement, notice, list, document, board or other thing in or on any office, or other property belonging to or used by the provider of a ICT and Media facility or services shall be guilty of the offence of unlawful posting of advertisement as per the Penal Code of Bhutan.

485. Notwithstanding anything contained under section 484 of this Act, the Authority may impose a fine as may be prescribed in the Rules and Regulations.

#### **Failure to assist or obstruction of lawful authority**

486. A person who:

- (1) Obstructs the exercise of the powers conferred under this Act shall be guilty of the offence of obstruction of lawful authority as per the Penal Code of Bhutan; or
- (2) Fails or refuses to give any assistance as required under this Act shall be guilty of the offence of failure to assist lawful authority as per the Penal Code of Bhutan.

#### **Tampering and reporting of false information**

487. A person shall be guilty of tampering with documents under the Penal Code of Bhutan, if the person intentionally alters, suppresses or destroys any document, which is required to be produced under section 67 of this Act.

488. A person shall be guilty of reporting of false information under the Penal Code of Bhutan, if the person in furnishing any estimate, return or other information required under this Act, makes any statement which the person knows to be false.

#### **General penalties for contravention of Act, Rules and Regulations**

489. Where any provision of this Act, Rules and Regulations specifies the class of crime for an offence, the person shall be liable to punishment in accordance with the provisions of this Act as well as any additional penalty which may be imposed by a Court in accordance with the Penal Code of Bhutan or any laws in force in Bhutan.

490. The Authority may impose reasonable penalty prescribed under the Rules and Regulations as endorsed by the Ministry for a particular offence which is not covered by this Act.

491. In determining the amount of fine or penalty under this Act, the appropriateness of such fine or penalty to the gravity of the offence shall be considered and in the case of a continuing or repeat offence, the Authority may prescribe, in addition to such penalties, a fine of such amount for every day or part of a day during which the offence continues.

## CHAPTER TWENTY THREE: MISCELLANEOUS

### Entry and search of premises

492. Where a Court is satisfied upon application that there is reasonable ground for suspecting that an offence under this Act or under the Rules and Regulations made thereunder, has been or is being committed, and that evidence of the commission of the offence is likely to be found on any premises; it shall, in accordance with the provisions of the Civil and Criminal Procedure Code of Bhutan, issue a search warrant.
493. Where under section 492 of this Act, a person has a right to examine and test any apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in or in attendance on, the vessel, aircraft or vehicle, to give any such assistance as may be reasonably required in the examination or testing of the apparatus.

### Power of police officer to access computer data

494. A police officer or any other officer of the Authority with the search warrant from a Court, may at any time:
- (1) Have access to and inspect and check the operation of any computer to which this section applies;
  - (2) Use or cause to be used any such computer to search for any data contained in or accessible through such computer; or
  - (3) Have access to any information, code or technology which has the capability of retransforming or unscrambling encrypted data contained in or accessible through such computer into a readable and comprehensible format or text.
495. A police officer or officer of the Authority may, for the purpose of investigating an offence under this Act or any other offence which has been disclosed in the course of the lawful exercise of the powers under this section, require the person by whom or on whose behalf any computer has been used or any person having charge of, or otherwise concerned with the operation of such computer, to provide reasonable technical and other assistance as may be required or be entitled to require any person in possession of decryption information to grant access to decryption information necessary to decrypt data required for the purpose of investigating any such offence.

## **Forfeiture**

496. An apparatus may be ordered to be forfeited under this Act, notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited may be disposed-off by the Authority in accordance with an order passed by a Court.
497. The Court may order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that apparatus except by delivering it up to the Authority within forty eight hours of being so required.

## **Disposal of apparatus and other seized property**

498. A property seized in pursuance of a warrant or in exercise of the power conferred under this Act may be retained until the end of the period of six months beginning with the date of the seizure.
499. After the end of the period for which the retention of seized property is authorised by virtue of section 498 of this Act, any such property which remains in the possession of the Authority shall be dealt with in accordance with the sections 501 and 502 of this Act.
500. The Authority shall take reasonable steps to deliver the property to any person appearing to it to be its owner.
501. Where the relevant property remains in the possession of the Authority after the end of the period of one year immediately following the end of the period for which its retention is authorised by section 498 of this Act, and it has not been possible to return it to its lawful owner, the Authority may disposed-off in such manner as it thinks fit.
502. The delivery of the property in accordance with section 500 of this Act, to any person appearing to the Authority to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of the property.

## **Examiner of electronic evidence**

503. The Ministry may, for the purpose of providing expert opinion on computer evidence before any court, specify by directive to a department, body or agency of the Government or any third party to act as an Examiner of Electronic Evidence.
504. For the purposes of section 503 of this Act, “computer evidence” means any information of probative value that is either stored or transmitted in electronic form which include among others, computer evidence, cell phones, audio, and video devices.

## **Disaster Management**

505. The Government shall leverage Telecom and ICT infrastructure and media services to prevent, mitigate and manage disasters.
506. The Ministry shall collaborate with the Disaster Management Agency to establish a disaster resilient communication system for disaster management.
507. The Government shall endeavour to establish a single hotline number for all emergency services.

## **Jurisdiction and appeals**

508. A person aggrieved by the decision, order and or directives issued by the Tribunal, as the case may be, under this Act, may appeal before the High Court within ten working days.

## **Financial provisions**

509. There shall be paid out of money provided by the Ministry of Finance administrative expenses incurred by the Ministry in consequence of the provisions of this Act and any increase attributable to this Act in the sums payable out of money provided under any other Act.

## **Power to make Rules Regulations**

510. For the purpose of this Act, the Ministry in consultation with relevant government agencies, security institutions, the Authority, Media Council, Film Commission, representatives of business enterprises and consumers, and providers of ICT facilities and Services may develop and issue Rules and Regulations.

## **Amendment**

511. The amendment of this Act by way of addition, variation or repeal may be effected only by the Parliament.

## **Authoritative text**

512. In any instance of a difference in meaning between the Dzongkha and English texts of this Act, the Dzongkha text shall prevail.
513. Words importing the masculine gender also include the feminine gender.
514. Words importing the singular number also include the plural number and vice versa.

## DEFINITIONS

515. Unless the context otherwise requires, the following words and terms used in this Act shall have the following meanings assigned to them:

- (1) “*Addressee*” in relation to a data message, means a person who is intended by the originator of the message to receive it, but does not include a person acting as an intermediary with respect to that data message;
- (2) “*Adult*” means a person who is eighteen years of age or above;
- (3) “*Apparatus*” means any device which is designed, constructed or adapted for use in connection with the operation of an ICT facility for transmitting, conveying or receiving any ICT and media service and, in particular includes any wire, cable, tube, pipe or other similar thing (including its casing or coating), which is so designed or adapted; any structure, pole or other thing in, on, by or from which any ICT apparatus is or may be installed, supported, carried or suspended; and customer equipment;
- (4) “*Authority*” means the Bhutan Information, Communication and Media Authority established under this Act;
- (5) “*Autonomous*” means the independence of the Authority to exercise its regulatory powers as provided in this Act;
- (6) “*Book*” includes every volume, part of a volume, pamphlet, booklet, brochure, and every sheet of music notation, map, chart or plan separately printed, in whatever form and language, but it shall not include pamphlets, booklets, brochures or other material produced solely for advertising or publicity purposes or, where it is published by a body, for its internal organisational purposes, or where it is published by a political party, for recognised electoral campaigning purposes;
- (7) “*Broadcasting*” means the dissemination, through the medium of electromagnetic waves, whether through free space (including by satellite) or through cables or billboards, in un-encoded or encoded form, of any form of communication, including signs, signals, pictures, images, graphics, data or sound, or a combination of them, intended to be received by the general public or any section of the general public, by means of any broadcasting receiving apparatus;



- (8) “*Broadcasting service*” means an ICT service for providing broadcasting to persons having appropriate equipment, including broadcasting receiving apparatus, for receiving that service regardless of the means of delivery of that service, but does not include: a service (including a teletext service) that provides only data, or text (with or without associated still images); or a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; or a service, or a class of services, that the Authority may determine and notify as not being a broadcasting service;
- (9) “*Business*” includes a trade, profession, employment or other commercial activity and also includes similar activity carried out by a person, whether incorporated or unincorporated;
- (10) “*Cabinet*” means the meeting of the Cabinet Ministers of the Royal Government of Bhutan;
- (11) “*Certificate*” for the purpose of chapter XV, means a data message or other record confirming the link between a signatory and signature creation data;
- (12) “children” means persons who have not completed the age of 18 years;
- (13) “*Cinematograph*” includes any apparatus for the representation of moving pictures;
- (14) “*Commercial*”, means matters arising from all relationships of a commercial nature whether contractual or not, and includes, but is not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business cooperation, carriage of goods or passengers by air, sea, rail or road;
- (15) “*Communications*”, in its electronic form, means the process of conveyance of data, messages or other content through transmission, emission or reception of signals, by wire or other electromagnetic means; where this term is used in the context of other media, it shall, as far as possible, be given its ordinary and natural meaning;
- (16) “*Company*” means a body incorporated under the Companies Act of the Kingdom of Bhutan;
- (17) “*Computer*” means any electronic, magnetic, optical or other data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which

are connected or related to the computer in a computer system or computer network;

- (18) “*Computer contaminant*” means any set of computer instructions that are designed to modify, destroy, record, or transmit data or programme residing within a computer, computer system or computer network or by any means to usurp the normal operation of the computer, computer system or computer network;
- (19) “*computer network*” means a telecommunications network that allows computers to exchange data;
- (20) “*Consumer*” means a person who buys, obtains or uses a product for personal, family, household, or other purposes of a non-commercial nature;
- (21) “*Content*” means any information, sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or in any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically or in other form;
- (22) “*Control*”, unless the context indicates otherwise, means the exercise of authoritative or dominating influence in any manner that results in control in fact, whether directly through the ownership of shares, securities or other instruments of value or indirectly through a trust, agreement or arrangement, understanding or practice, whether or not having legal or equitable force, of anybody corporate;
- (23) “*Court*”, means any court endowed with the relevant jurisdiction and established as part of the Royal Courts of Justice;
- (24) “*Cross media ownership*” means ownership in different media businesses;
- (25) “*Customer equipment*” means any equipment, apparatus or instrument along with its connecting link unto the interface unit connecting such equipment, apparatus or instrument with or to an ICT facility;
- (26) “*Cyber security*” means protecting information, apparatus, ICT facilities, computer, computer network, and information stored therein from unauthorised access, use, disclosure, disruption, modification or destruction;
- (27) “*Damage*”, in addition to its ordinary meaning, means to destroy, alter, delete, add, modify or rearrange any computer data by any means;

- (28) “*Data*”, for the purposes of this Act means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and which is intended to be processed, is being processed, has been processed, or is capable of being processed in a computer system or computer network, and may be in any form including computer printouts, magnetic or optical storage media, punched cards, or punched tapes or stored internally in the memory of a computer, computer system or computer network;
- (29) “*Data message*”, for the purposes of this Act means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;
- (30) “*Decryption information*” means information or technology that enables a person to readily re-transform or unscramble encrypted data from its unreadable and incomprehensible format to other more easily readable version;
- (31) “*Document*” means any printed or other material including a book, newspaper, magazine, pamphlet, leaflet, map, chart, and plan, and the word ‘document’ shall, if the context so requires, include such material created or produced in electronic form;
- (32) “*Domestic company*” means any company or other similar entity, whether incorporated or not:
- (a) which is established under the laws of Bhutan;
  - (b) 50 per cent or more of whose shares are owned, held or controlled by persons who are citizens of Bhutan; or
- (33) “*Donation or benefits in kind*” shall include money, securities, movable or immovable property or any other valuable consideration whatsoever.  
Provided that it shall not include:
- (a) benefits by way of hospitality received by an ICT and media business or its directors or employees from any foreign party, as long as the value of such hospitality does not exceed such reasonable amount as may be specified in Regulations made in this behalf by the Minister/Ministry;
  - (b) monies received by an ICT or media business by way of royalties or syndication fees for news, articles or features supplied by it to a foreign party, or by way of advertising revenue in respect of advertisements commissioned by a foreign party, in the normal course of business;

- (34) “*Drama*” shall include but not limited to performing troupe, drama, road shows, concerts and reality shows;
- (35) “*Editor*” means a person having editorial or equivalent responsibility in relation to media content and for the selection, arrangement, organisation, editing and scheduling of news and other items that are intended for publication in a newspaper or for the broadcast of such material in electronic form. This term shall include any person who controls the editorial policy of the newspaper or other media, by whatever title he may be known within the organisation to which he belongs;
- (36) “*Electronic*” means relating to technology having electrical, magnetic, optical, electromagnetic, biometric and photonic or similar capabilities, whether digital, analogue or otherwise;
- (37) “*Electronic commerce*” means a commercial activity that involves the buying, selling, distribution, leasing, licensing, marketing, production, and promotion of products and services through electronic means, including over the Internet, and these terms shall also include soliciting of donations and operation of contests and similar activities;
- (38) “*E-governance*” includes, but is not limited to, the use by government agencies of information technologies to deliver services and carry out transactions, whether of a commercial or other nature, to or with members of the public, businesses and other entities;
- (39) “*Electronic signature*” means data in electronic form, affixed to or logically associated with a data message, to identify the originator or signatory of the message and to indicate the originator’s or signatory’s approval of the information contained in the message;
- (40) “*Emergency services*” means the police, fire, ambulance and such other services as may be so designated in the rules and regulations made under this Act;
- (41) “*Encrypted*” or “*encoded*”, in relation to broadcasting or data transmission, means treated electronically or otherwise for the purpose of preventing intelligible reception of the material being broadcast, by unauthorised persons;
- (42) *Entertainment*; includes any performances, exhibition and dance that are based on ICT and Media facilities and services specified by the Authority under the Rules and Regulations.

- (43) “*Film*” means a cinematograph film and includes cinematograph films contained in celluloid, video-tape, on compact disc or digital versatile disc formats;
- (44) “*Foreign company*” means any company or other similar entity, whether incorporated or not:
- (a) which is registered or incorporated under foreign laws
  - (b) the members of whose Board of Directors are not all citizens of Bhutan;
  - (c) 51 percent or more of whose shares are owned, held or controlled by persons who are not citizens of Bhutan; or
  - (d) which is otherwise effectively owned or controlled by persons who are not citizens of Bhutan;
- (45) “*Foreign journalist*”, for the purposes of this Act, means any journalist who:
- (a) regardless of whether he is a citizen or permanent resident of Bhutan, is employed by a foreign newspaper in any journalistic capacity within Bhutan, whether temporarily or on a long-term basis; or
  - (b) not being either a citizen or permanent resident of Bhutan, works as a correspondent or reporter within Bhutan for any newspaper, whether temporarily or on a long-term basis;
- (46) “*Foreign source*” includes the following:
- (a) the Government of any country other than Bhutan or the agent of any such Government, whether resident in Bhutan or otherwise;
  - (b) any company, financial institution, association or society incorporated or constituted outside Bhutan whether or not it has a branch office or place of business in Bhutan;
  - (c) any person who is not a citizen of Bhutan whether or not he is resident in Bhutan; or
  - (d) such other sources outside Bhutan declared by the Authority to be a foreign source;
- (47) “*Frequency*”, means frequency of electromagnetic waves used for providing an ICT service;
- (48) “*Government*”, means the Royal Government of Bhutan;
- (49) “*Governmental agency*” or “*government agency*” means and includes the Parliament, ministries, departments, divisions, agencies, public corporations, and other authorities owned, managed, supervised or controlled by the government;

- (50) “*ICT*” means information and communications technology, which includes the full range of electronic technologies and techniques used to manage information and knowledge;
- (51) “*ICT facility*” means any facility, apparatus or other thing that is used or is capable of being used principally for, or in connection with, the provision of ICT services, and includes a transmission facility as well as any or all of the following facilities, fixed links and cables; computer facilities; pay-phone/communication facilities; radio communication transmitters, receivers and links; satellite earth stations, towers, and poles; and ducts and pits used in conjunction with other facilities as may be prescribed by the rules; unless otherwise stated, an ICT facility relates to a public ICT facility;
- (52) “*ICT facility or service provider*” means a person who owns, operates, manages or provides any ICT facility;
- (53) “*ICT network facility*” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of ICT services, but does not include customer equipment, and includes such other facilities as may be prescribed by the rules; unless otherwise stated, an ICT network facility relates to a public ICT network facility;
- (54) “*ICT network service*” means any element or combination of elements of ICT services provided with the *use* of any ICT facility or combination of ICT facilities, and includes such other services as may be prescribed by the rules; unless otherwise stated, an ICT network service relates to a public ICT network service;
- (55) “*ICT service*” means any or all of the following services: telecommunications services, such as public telephony, telegraphy, facsimile, cellular telephony, and pay-phone/communication services; broadcasting services like satellite broadcasting, broadcasting distribution (cable television), mobile satellite, subscription broadcasting, and terrestrial free-to-air television and radio broadcasting, information technology services, such as Internet service, web-casting, e-mail and any other electronic service; Internet Protocol (IP) telephony; digital library and commercial information services; network-based information and related specialised professional services provided by electronic means, public-switched data and any other similar service, and includes such other services as may be prescribed by the rules; unless otherwise stated, an ICT service relates to a public ICT service;

- (56) “*Information*” includes a collection of facts, data, news, or messages (whether in its original form or otherwise) which is contained in a document, signature, seal, text, images, sound, or speech;
- (57) “*Intercept*”, means to stop, deflect, interrupt any message, data or information with a view to acquiring the contents thereof, whether by aural or other means or through the use of such devices as may be considered necessary;
- (58) “*Interconnection*”, means the physical or logical connection of public ICT facilities of different ICT facility and/or ICT service providers and/or media service providers;
- (59) “*Internet*” means an international telecommunication network through which computers are interconnected using the Transmission Control Protocol/Internet Protocol;
- (60) “*Internet Service Provider (ISP)*” means a natural or legal person or association of persons who provides individuals and businesses access to the Internet and who may make also available other Internet-based services;
- (61) “*Journalist*” includes an editor, sub-editor, editorial writer, reporter, columnist, commentator, freelance contributor and any other person who is engaged in the task of editing, reporting or writing for a newspaper, broadcasting or other media service;
- (62) “*Media*” or “*mass media*” means relevant ICT services, including broadcast and Internet-based services and also include the contemporary, visual and performing arts that have converged with the conventional media;
- (63) “*Media service*” means any service provided through any media and made available to, or accessible by, the general public;
- (64) “*Minister*” means the Ministry of Information and Communications;
- (65) “*Ministry*”, means the Ministry of Information and Communications, represented by the Minister and the Secretary;
- (66) “*Newspaper*” include any publication containing news, information, reports of events and occurrences, or views and comments, published in any form and in any language for sale or for free distribution at regular intervals such as magazines and other periodicals, but does not include any publication published by or on behalf of the Government;
- (67) “*Non-Executive Member*” means the members of the Authority who do not form a part of the core management team;



- (68) “*Numbering*”, means any identifier which would need to be used in conjunction with any public ICT service for the purposes of establishing a connection with any termination point in a public ICT facility, user, ICT apparatus connected to any public ICT facility or service element, but excluding any identifier which is not accessible to the generality of users of a public ICT service;
- (69) “*Number portability*” means the ability of customers/subscribers to change the provider of their telephone service without having to change their telephone numbers;
- (70) “*Obscene*” means material and/or information that (a) obviously relates to sex or shows sex; (b) is designed to incite to indecency or lust; and (c) appeals predominantly to an interest in sexual conduct, depicts or describes sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value, but does not include any material and/or information of specifically artistic or religious nature and scope.
- (71) “*Originator*” of a data message, for the purposes of this Act means a person by whom or on whose behalf, the data message purports to have been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that data message;
- (72) “*Person*” includes any individual, partnership, company, unincorporated organization, Government, Governmental agency, and trustee, executor, administrator or other legal representative;
- (73) “*Personal data*” or “*Personal information*” means any data or information which relates to a person who can be identified from that data or that data or other information, which is in the possession of, or is likely to come into the possession of, an ICT service provider or ICT facility provider, and includes any expression of opinion about that person and any indication of the intentions of the ICT service provider or ICT facility provider or any other person in respect of that person;
- (74) “*Printing*” includes writing, lithography, cyclostyling, photocopying, photography, and any other physical or electronic modes or forms of representing or reproducing words, pictures, *designs* or objects in a visible form;
- (75) “*Product*” means a good, service, object, merchandise or other similar item of value produced by human *or* mechanical effort or by a natural process which may be offered for sale, *exchange* or other transaction;

- (76) “*Programme*”, in the context of broadcast services, means any matter, or arrangement of matter, including matter whether or not of a commercial nature such as advertisements, television or radio programme or sponsorship which is intended to inform, educate or entertain the audience to which it is broadcast, or intended to be broadcast, but this term does not include any matter that is wholly or substantially in the form of, or related to, any private communication;
- (77) “*Proprietor*” means owner and for the purposes of fixing responsibility for operations of a company, includes the chief executive officer of the company;
- (78) “*Public ICT system*” means an ICT network facility and ICT network service used by a person to provide ICT service to the public for compensation;
- (79) “*Public place*” means any premises, including a building or open air auditorium, to which any member of the general public may be able to gain admission, whether on payment of a charge or otherwise;
- (80) “*Publication*”, means the act of making news, views, information, pictures, drawings or other matter available or accessible to the public at large, or a section of the public, in any form or through any means of communication;
- (81) “*Radio communication*” means telecommunication by means of radio waves and includes the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of a frequency or *electromagnetic energy*, being energy which either: serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation of control of machinery or apparatus; or is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or any objects of any class;
- (82) “*Radio communication service*” means a service involving the transmission, emission and/or reception of radio waves for specific ICT services, including broadcasting;
- (83) “*Radio*”, unless the context indicates otherwise, means a system or network for the broadcast of audible signals encoded in electromagnetic waves which may be accessed by anyone in possession of a suitable receiving apparatus;
- (84) “*Radio communication station*” includes the radio communication apparatus of a ship, aircraft, satellite or earth station;

- (85) “*Relying party*”, means a person who may act on the basis of a certificate or an electronic signature;
- (86) “*Sensitive personal data or information*” includes:
- (a) password;
  - (b) financial information such as bank account or credit card or debit card details, etc;
  - (c) physical, physiological and mental health condition;
  - (d) sexual orientation;
  - (e) medical records and history;
  - (f) biometric information; and
  - (g) Other information that may be legally deemed to be private.
- Provided that, any information that is freely available or accessible in public domain or available under any other existing national laws shall not be regarded as sensitive personal information.
- (87) “*Signatory*”, for the purposes of this Act, means a person who holds signature creation data and acts either on his own behalf or on behalf of the person he represents;
- (88) “*Spectrum*” means a continuous range of radio frequencies up to and including a *frequency* of 3000 Gigahertz;
- (89) “*Station*”, includes all premises housing studios, transmitters, receivers or other equipment or facilities, and relay stations, and in the context of broadcasting service, also means any place from where any matter is broadcast;
- (90) “*Subscriber*” of a service means a person who subscribes to a specific ICT and media service primarily for his own use;
- (91) “*Telecommunication*” means any transmission, emission or reception of signs, signals, writing, images, data and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic system;
- (92) “*Telecommunication service*” means a service involving communication through ICT facilities, networks, and systems and includes the provision in whole or in part of ICT facilities and any related equipment, whether by sale, lease or otherwise;
- (93) “*Television*” means a system for the conveyance of visual information, together with one or more channels of associated audio or suitable encoded textual information, or both;

- (94) “*Traffic data*” means any data identifying or purporting to identify any person, computer, or computer network or location to or from which the communication is or may be transmitted and includes communications origin, destination, route, time, data, size, duration or type of underlying service or any other information;
- (95) “*Transmission facility*” means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of signals or intelligence between two or more terminals, but does not include any transmission apparatus exempted by rules;
- (96) “*Tribunal*” means the Bhutan Information, Communication and Media Appellate Tribunal;
- (97) “*Universal service*” is an evolving precept that the Minister shall precisely define and revise, if necessary, periodically through policy directives ~~its rules~~, taking into account advances in information and communication technologies and services as well as the principles of quality and just, reasonable, affordable rates, access to advanced services, access in rural and high-cost areas, equitable and non-discriminatory contributions, specific predictable support mechanisms, access to services for schools, libraries and health care, and competitive neutrality;
- (98) “*Vendor*”, for the purposes of this Act, means a business or non-profit organization conducting electronic commerce directly with consumers.