

# LEGAL ISSUES POSED BY THE INTERNET - THE MALAYSIAN PERSPECTIVE

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## INTRODUCTION

Access to the Internet in Malaysia is gaining popularity and becoming more widespread. Although specific legal issues relating to the Internet have yet to be brought before the courts, Malaysia is in the process of examining the legal issues posed by the Internet and information technology, and legislative action and changes may be proposed.

## COPYRIGHT ISSUES

In this paper, I will provide the Malaysian perspective to the issues raised by Dr Gordon Hughes in his paper.

## GENERAL REMARKS

It should be kept in mind that first, although the Internet shares common features with public utilities or bodies such as telecommunications bodies, broadcasting stations, post offices, and the press, it cannot be classified as any one of the entities so named. Hence, it is not regulated by any of the laws governing those bodies.

Secondly, Malaysia does not have any laws dealing specifically with computer or information technology. In the absence of special legislation to meet or counter the issues and problems raised by the Internet, recourse must be had to existing laws. This creates certain constraints, particularly in the case of statutory provisions which were drafted without computer or information technology in mind. In most cases, legal gymnastics skills are required to resolve the issues posed by the Internet.

Taking into the above considerations, as a matter of policy,

- (i) Should we regulate the Internet, assuming that regulation is possible?
- (ii) Should activities over the Internet be regulated at all in view of the impracticalities and difficulties of regulation?

## COPYRIGHT ISSUES

To what extent is there potential for copyright to be infringed by unauthorised transmission or downloading of protected works, data or programs? Some of the possible exclusive rights which may be infringed are the reproduction right, the public performance right, the communication by cable right, the broadcasting right, and the distribution right.

To the extent that there is any reproduction of the work, data or program in the processes of uploading, transmission or downloading, there may be an infringement of copyright.

Arguably, the transmission of protected works, data or programs may also infringe the public performance right, the communication by cable right and the broadcasting right.



It could also be argued that the transmission of protected works, data or programs over the Internet amounts to a distribution of the works, data, or programs. Our Copyright Act reserves the distribution of copies of the work to the public to the owner of the copyright. "Distribution" refers to the sale, rental, lease or lending of copies of the work. Whether transmission amounts to distribution depends on whether the exclusive right is restricted to distribution of tangible or physical copies. Our Copyright Act defines "copy" to mean a reproduction of a work in a written form, in the form of a recording or film, or in any other material form. Arguably, because of the use of the term "material form", "copies" may refer to both tangible as well as intangible copies, so as to cover transmission over the Internet.

The Copyright Act also provides for criminal sanctions in respect of certain commercial dealings with copyright works. It is an offence to make, sell, distribute, possess, exhibit and import infringing copies. A person who uploads a protected work on, for instance, a bulletin board system, for no reason other than to make available the work for the benefit of other users, may be liable for infringement of copyright but not for any criminal offence under the Copyright Act. However, interestingly enough, the act of distribution is an exception; there is no requirement that distribution, to be an offence, must be for any commercial purposes. It would thus appear that distribution per se of an infringing copy is an offence, whether or not the act is in the course of or for the purpose of commercial dealings.

## DEFAMATION

Publication of defamatory material attracts both criminal and civil liabilities under our Penal Code (Cap 45) and the Defamation Act 1957 respectively. The transmission of a defamation on the Internet constitutes just another means of publication.

There may also be possible liabilities under the Telecommunications Act 1950, which makes it an offence for any person to transmit by telecommunication a message which he knows to be false or fabricated (section 29), assuming that the defamatory statement is false.

## OBSCENE MATERIAL

Currently, there are at least four pieces of legislation which deal with the dissemination of obscene material in Malaysia, namely, the Penal Code, the Printing Presses and Publications Act 1984, the Films (Censorship) Act 1952 and the Broadcasting Act 1988. These laws are targetted at the dissemination of specific subject matter, the contents of which are considered to be obscene, immoral or against public interest. Of the four, only the first three statutes are of relevance.

Section 292 of the Penal Code makes it an offence to sell, let for hire, distribute, publicly exhibit or in any manner put into circulation any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object. It is also an offence to import or to advertise the availability of such material. Additional penalties are imposed where such material is sold, let for hire, distributed or circulated to any person under the age of twenty.



The above provision would appear to be sufficiently broad to cover transmission of obscene material over the Internet.

Under section 7 of the Printing Presses and Publications Act 1984, the Minister in charge may by order prohibit the printing, importation, production, reproduction, publication, sale, issue, circulation, distribution or possession of any publication which is "prejudicial to morality". "Publication" is defined to include all written or printed matter and everything whether of a nature familiar to written or printed matter or not containing any visible representation. Broadly interpreted, "publication" may include electronic data or graphics as to cover material transmitted over the Internet. There is however, given the nature of the Internet, the difficulty of identifying the publication for purposes of the order to ban.

The Films (Censorship) Act 1952 requires all films which are intended to be exhibited in Malaysia to be presented to the Board of Censors for the purpose of censorship. Technically, this would cover all films shown over the Internet, although practically, it is doubtful that censorship can be carried out in such circumstances.

There is nothing in the Telecommunications Act 1950, which deals with the communication of obscene material or messages over telephone lines. However, sending any rude or obscene messages to a woman with the intention of insulting the modesty of that woman is an offence under section 509 of the Penal Code. Presumably, this would cover sending rude or obscene messages over the telephone and by extension, the Internet.

There is also no specific law, apart from the Penal Code, which deals with the transmission of obscene material to children or with child pornography.

## CRIME

There is no specific law dealing with computer-related crimes in Malaysia, which means that in dealing with such activities, reference must be made to the Penal Code or any other statutes. Here, more than any other areas under discussion, there are considerable constraints. The Penal Code was drafted in the pre-information technology age, and naturally, the terms and terminologies used are more suited to that age. For instance, most of the provisions which may be considered to be relevant to computer-related crimes are those which are classified as offences against property, such as theft, criminal misappropriation, cheating, and mischief. The word "property" is not defined, and whether data or information is "property" is still an open question. Even assuming that the court interprets the word to include data or information, the activities sought to be proscribed may not necessary constitute offences within the terms of the relevant statutory provisions eg theft of data. The relevant provision on "theft" requires some physical movement of property from the person entitled to possession. A copy of data or information can be made without physically removing the data from the person entitled to its possession. It may, however, be argued that when data is copied, there is "movement" from one computer to another.



## JURISDICTION

The ability to regulate the activities over the Internet is perhaps the most challenging issue in so far as the Internet is concerned. The Internet transcends all physical and national boundaries. Enacting laws to deal with the issues posed by the Internet, if viable, may only be workable on a national level. One solution is to provide for extra-territorial jurisdiction in cases where the offence either originates in this country or is directed against computers, data, or program in this country. The offence must also be extraditable, that is, one which is punishable under the laws of Malaysia and the other country. Towards this end, international co-operation and harmonisation of laws relating to computer-related crimes is necessary.