

ISLAM IN CYBER ENVIRONMENT AND THE LEGAL ISSUES IN MALAYSIA*

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Abstract

Development in information communication technology (ICT) has created new ways for everyone to interact and conduct business. It is no doubt that Internet is one of the most popular mediums of communication in cyber environment. However, this medium can also create more opportunities to people to commit various types of offences and wrong doings. The offences include cybercrimes, violation of privacy, defamation, pornography and insult on Islam. Not only that, the marriage institution is also at stake when a husband can just send an SMS or email to divorce his wife. For Muslims, the above offences and wrongdoings are unethical and against Islamic value. Thus, this paper will discuss some legal issues on the above offences and wrong doings by referring to the relevant laws and cases. The objective of this paper is to highlight that Islamic value is very important and complying with the laws (civil and Islamic) will help to prevent crimes in the cyber environment.

Keywords : Cyber environment, cyber offences, Legal issues, Islamic value and ethics, the laws

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Introduction

Development in information communication technology (ICT) has created new ways in communication and businesses. One of the most advance technologies is the use of Internet or the Net. According to Wikipedia, the Internet is a global system of interconnected computer networks that use the standard Internet Protocol Suite (TCP/IP) to serve billions of users worldwide. It is a *network of networks* that consists of millions of private, public, academic, business, and government networks, of local to global scope, that are linked by a broad array of electronic, wireless and optical networking technologies. The Internet carries a vast range of information resources and services, such as the inter-linked hypertext documents of the World Wide Web (WWW) and the infrastructure to support electronic mail or e-mail.¹

The Internet has become one of the most popular medium of communication in cyber environment. Through Internet many things can be done faster and better without any boundaries. However, since Internet is also considered as a double edged tool it has several benefits and consequences of misusing it. These are reflected in various type of offences committed over the Internet. These cyber offences or cybercrimes include computer fraud, hacking, Internet defamation, violation of privacy, online pornography and insult on Islam.

In Islam, the use of Internet and new technology is allowed as long as it is in compliance with the Shariah principles or the Shariah law. (see Holy Quran Chapter 96; verses 1-5). Hence, the Muslims must always remember that there are certain acts which are permissible and not permissible in Islam. In this paper, the author will discuss on Islam in the cyber environment and some legal issues arising from new technology that may affect or have affected the Muslims and

¹ <http://en.wikipedia.org/wiki/Internet> viewed on 29 August 2011

others. The objective of this paper is to highlight that observing Islamic values and ethics are very important when using the new media and complying with the laws (civil and Islamic) will help to reduce cyber offences.

Islam in Cyber Environment

Cyber environment refers to virtual environment which has no boundaries. This environment is used as a medium to communicate, deliver information and conduct electronic transactions. Even giving electronic fatwa (E-Fatwa) is also done by using Internet. Generally, Muslims are allowed to explore the cyber world and take as much as possible the opportunities from this technology. Muslims will benefit from the Internet since it can be used to communicate with others from any parts of the world, to complete any contractual arrangements and to spread the religion of Islam in correctly. Since Islam is a comprehensive religion its teachings cover every aspect of life and has unlimited application. In other words, the Islamic teachings extend beyond boundaries, time and technology. Indeed, it is more borderless than the borderless world.

Hence, when the Government decided not to censor the use of Internet it is actually making a promise that any access to any websites is allowed and guaranteed.² This guarantee or freedom of access has to be taken into consideration by many especially the Muslims. In my opinion, there is a risk to such freedom. It may not only provide more opportunities to develop the country and the society but also open new doors to the culprit to commit crimes in the cyberspace.

² See MSC Malaysia 10 Point Bill of Guarantees at <http://www.msomalaysia.my/topic/MSOMalaysiaBill+of+Guarantees> viewed on 20th August 2011

As a result, the Government is now working hard to combat the computer misuses and cyber attacks. New laws (updated and reviewed), Regulations, Guidelines have to be introduced in order to combat the attacks. Other effort includes blocking several websites. The blocking of ten websites was done on May 30, 2011 where the ISPs were ordered to block 10 file-sharing websites as to curb piracy.³ This action is good as it protects the right of the original owner over his data and its contents. The CyberSecurity Malaysia has also introduced new Internet guidelines on social networking sites called, Best Practice on Social Networking Sites (SNS).⁴ The SNS contain explanations on possible impacts of social networking sites, guidance of using the sites and useful links for reference. Followed by this, the CyberSecurity Malaysia has also proposed that the National Cyber Security Policy (DKSN) be reviewed to emphasise on educational elements and strategies.⁵

However, not many people agree on the blocking of websites. As to show their dissatisfaction the hackers group launched attacks on many government and non-governmental websites. Fortunately, the authorities manage to curb the attacks. Few suspects were identified and there were also some locals. Nevertheless, some online users can still bypass the blocked websites using simple steps explained over the internet. Even the United Nation's independent expert on freedom of speech says governments that cut users' access to the Internet are violating a basic human right "regardless of the justification provided".⁶ What is your opinion then? The issue is to what extend should freedom of access and expression be allowed? From the Islamic point of view, even the freedom is guaranteed but it must be exercised within the limit.

³ P.Aruna & M.Kumar, "Online users bypass block", *The Star*, 13 June 2011 at 14

⁴ 'New Internet Guidelines on Social Networking Sites, 9 September 2011, *Bernama News* at <http://iplawmalaysia.com/> viewed on 10 September 2011. See the Guidelines at

⁵ 'Cyber Security Malaysia proposes review of DKSN,' *Bernama News*, 13 September 2011 at <http://www.bernama.com.my/bernama/v5/newsindex.php?id=613091> viewed on 15 September 2011

⁶ "Government must never block web access", *The STAR (StarBytz)*, 24 May 2011 at 12.

Observing Islamic Ethics In Cyber Environment

The use of technology in social networking environment has to be in accordance with certain code of ethics. For Muslims, the six articles of faiths or beliefs are the guiding principles. There are other spiritual bases namely; piety (Taqwa), doing good deeds for the sake of Allah s.w.t. (Ikhlas), trust in Allah s.w.t (Tawakkal), steadfastness, patience and fortitude (Sabr) and thankful to Allah s.w.t. (Shukr).⁷ For every pillar or Article there are verses from Al Quran and Hadith. The Muslims must also avoid back biting, cursing, suspicion and jealousy, dishonesty and many other bad attitudes.⁸ These are some of the Islamic ethics of which the Internet users should comply.

In addition, there must also be compliance on computer ethics. The term, 'ethics' refers to the rules and standards governing the rightful or wrongful behavior of an individual and it defines what is good for the individual and for society and establishes the nature of duties that people owe themselves and one another. In relation to cyber world, a new type of ethics known as computer ethics has emerged resulting in the creation of Code of Computer Ethics that may have binding effect on the professionals particularly if the code becomes part of the work ethic and procedure.⁹ This Code is provided by the Computer Ethics Institute which laid down ten points known as "Ten Commandments of Computer Ethics."¹⁰ The Commandments were introduced in the paper "In Pursuit of a 'Ten Commandments' for Computer Ethics" by Ramon C.

⁷ Athar Husain, The message of Muhammad: Prophet Muhammad and His mission, Islamic Book Foundation, Lahore: Pakistan, 1980 at Chapter VI pp94- 98.

⁸ Athar Husain, The message of Muhammad: Prophet Muhammad and His mission, Islamic Book Foundation, Lahore: Pakistan, 1980 at Chapter VII pp99-118.

⁹ http://en.wikipedia.org/wiki/Computer_ethics_retrieved_16th_July_2010. See also Association for Computing Machinery, Inc. Association for Computing Machinery: Code of Ethics.

¹⁰ Ibid.

Barquin as a means to create "a set of standards to guide and instruct people in the ethical use of computers." The Ten Commandments are as follow:¹¹

- i) One shall not use the computer to harm other people,
- ii) one shall not interfere with other people's computer work,
- iii) one shall not snoop around in other people's computer files,
- iv) one shall not use a computer to steal,
- v) one shall not use a computer to bear false witness,
- vi) one shall not copy or use proprietary software for which you have not paid,
- vii) one shall not use other people's computer resources without authorization or proper compensation,
- viii) one shall not appropriate other people's intellectual output,
- ix) one shall think about the social consequences of the program he is writing or the system he is designing and
- x) one shall always use a computer in ways that ensure consideration and respect for his fellow human.¹²

Islam and the guidelines in Communication

There are various types of media that can be used as a communication tool. Other than the newspaper, television and radio one can also communicate using the hand phone, iphone, ipad

¹¹ See http://en.wikipedia.org/wiki/Ten_Commandments_of_Computer_Ethics viewed 16th July 2011 and Duryana Mohamed & Juriah Abdul Jalil, *Violation of Cyberlaws and Computer Ethics: the Consequences and Potential legal Actions*, International Conference on Ethics and Professionalism 2010 (ICEP), organized by University Kebangsaan Malaysia, 1-2 December 2010, Equitorial Hotel, Bangi.

¹² Computer ethics and legal issues at <http://www.freewebs.com>. These commandments have been widely quoted in computer ethics literature even though they were criticized by hackers and some academia.¹² These commandments have been used by the computer security professionals from Certified Information Security Professional (CISSP) as a foundation for its own ethics rules.

and the computer. In future, there will be more sophisticated technologies. Thus, Muslims must be ready to adopt the changes and new development in ICT.

In Islam, there are certain guidelines in communication. These guidelines have in fact been referred to by Muslims and they are available in the Holy Quran and Sunnah of the Prophet s.a.w. Thus, when communicating Muslims are required to observe the following ethics:¹³

a) *Mutual Respect*¹⁴

One must have mutual respect for each other and avoid hurting his feeling when making any statements. Everyone needs to live in peace and harmony. Hence, one must always try to communicate and understand each other.¹⁵ In cyber environment, one must not use the Internet to commit cyber bullying by sending or posting text or images intended to hurt or embarrass another person.¹⁶

b) *Be Gentle, Forgive, Forget, Discuss,¹⁷ Restrain Anger, Pardon All Men, And Do Well To Others.*¹⁸

Good ethics (*akhlak*) is required for every Muslims. The best example is embodied in Prophet Muhammad himself.¹⁹ These requirements are significant when it comes to

¹³ Norashikin Mohd Yusof, Islam In ICT Era A More Active Role Is Expected And Promoted , [2002] MLJ

¹⁴ Al-Quran. An-Nisaa. 4: 86

¹⁵ Al-Quran. Al-Hujaraat. 49: 13

¹⁶ See the definition of cyber bullying at the National Crime Prevention Council at <http://www.ncpc.org/cyberbullying> viewed on 5 August 2011

¹⁷ Al-Quran. Al-Imran. 3: 159

¹⁸ Al-Quran. Al-Imran. 3: 134

dealings/communicating with others. Islam also encourages open²⁰ discussions amongst members of groups, family or society, seeking their views before reaching a decision. Even when others and particularly the enemies of Islam carry out evil plan/actions against Muslim and Islam, Al-Quran forbids Muslim to reciprocate in the same manner. To be likewise merely proves to the kafirun that Muslims are no better or worse than them.²¹

c) *Not To Follow And Trust blindly,²² Pay Debts, Honor Promises And Not To Distort The Truth Or Lie²³*

Seeking knowledge and learning new things are encouraged among Muslims. There is no limit to learn as long as Muslims fulfill their obligations and follow the teachings of Islam as provided by Al-Quran and sunnah. Hence, Muslims should not let the opportunities to learn more in the cyber environment. They must continue to learn²⁴ otherwise they will be left behind and would end up as mere followers instead of leaders or thinkers and shall be manipulated easily.²⁵ It is parallel with the requirement of Islamic

¹⁹ Al-Quran. Al-Ahzab. 33: 21 & 45, Yaasiin. 36: 2-6

²⁰ Al-Quran. An-Nisaa. 4: 114. This verse reminds Muslims the danger of the seemingly harmless act of whispering in view of others as it could lead to misunderstanding, misconception, raise more questions than provides answers and usually secrecy is for evil ends. Islam therefore disapproves secrecy, loves and enjoins openness in all consultations and doings. However this not mean that secrecy is not permissible at all.

²¹ Al-Quran. Al-Maidah. 5: 2

²² Al-Quran. Al-Imran. 3: 73

²³ Al-Quran. Al-Imran. 3 ;75-78

²⁴ Al-Quran. Al-Baqarah. 2: 282

²⁵ M. Lings, Mohammad. His life based on the earliest source, Foundation For Traditional Studies. Kuala Lumpur, 1983, p. 81. Prophet Muhammad once has asked one of his close friends learn how to write, read and speaks in Hebrew to ensure that the Jews do not take them advantage of.

teaching, prohibiting Muslims not to distort the truth or lie in order to gain advantages over others. Endowed with 'akal' and 'akhlak', Muslims are armed with the best and powerful weapons, they should fully utilize the same, learn to be wary and not to believe or trust blindly.²⁶

d) Say No Words Of Ambiguous Import But Words Of Respect,²⁷ Fight Against Defamation And Slander, As They Are Worst Than Murder²⁸

Distortion, manipulation, lies and ill feelings could potentially lead to rampant act of defamation and slandering in the society. Islam forbids these.²⁹ Since Islam believes in precautionary measures rather than cures, it advocates Muslims to fight³⁰ against defamation or slander never practice and eliminate them from mushrooming.

e) When Tried And Tested, Hear Much That Will Grieve, Perseverance, Patient, Guard Against Evil, Then That Will Be A Determining Factor³¹

No one is safe from being tested. The challenges are indeed expected³² and the same come in different forms, shapes and times. Even when such challenges come from the enemy of Islam, causing a lot of hurt feelings as well as grievances, Muslims nevertheless still have the

²⁶ Al-Quran. Ali-Imran. 3: 149

²⁷ Al-Quran. Al-Baqarah. 2: 104

²⁸ Al-Quran. Al-Baqarah. 2: 159 & 193

²⁹ Al-Quran. Ali-Imran. 3: 71-73

³⁰ Al-Quran. Al-Taubah. 9: 73-74

³¹ Al-Quran. Ali-Imran. 3: 186

³² Al-quran. An-'Kaabut. 29: 1-3

obligations to be fair to them, capable of controlling themselves,³³ and not to retaliate in aggression.³⁴ Rather Muslims must seek another alternative in seeking truce, avoid war mongering at any costs, never hampered by disillusion for all good deeds are difficult to attain.³⁵

f) Man Of The Same Origin, Dispute Must Be Settled Amicably According To Al-Quran³⁶

Instead Muslims are encouraged to settle their dispute amicably. Through negotiations, discussions and consultation, the above is able to be achieved. In order to achieve this, the flair and traits in communication are the order of the day.

g) Muslims Must Stand United³⁷

All the present predicaments the Muslims are facing are mainly due to their own selfish attitudes and ignorance. Despite warning and reminders as stated in Al-Quran, Muslims worldwide choose to turn their blind eyes towards them. In order to be and stays united, Muslims and Muslim nations need to increase their collaboration and enhance effective communication with each other.

The Role Of New Media And Its Threat To Muslims

³³ Al-Quran. Al-Maidah. 5: 42-43 & 49

³⁴ A. A. Qadri, Islamic jurisprudence in the modern world, Ashraf Printing, Lahore, 1981, p. 276.

³⁵ Al-Quran. An-Nisaa. 4: 104, Al- Baqarah. 2: 153-157

³⁶ Al-Quran. Al-Baqarah. 2: 203

³⁷ Al-Quran. An-Nisaa. 4: 88-90

Media plays an important role in the society. Other than delivering news the media can also be used as a platform or medium to voice any dissatisfaction. Nevertheless, this must be done according to the basic norms as stipulated by various international covenants inter alia the International Covenant on Civil And Political Rights 1996. There are actually thirteen (13) pillars of basic media norms however the pillars have been ignored by most of the media companies.³⁸

In Malaysia, there are several laws and Regulations that govern the communication and broadcasting media. Among the laws include National Archives Act 1966, Official Secrets Act 1972, Telemedicine Act 1997, Communications and Multimedia Commission Act 1998, Communications and Multimedia Act 1998, Optical Disks Act 2000 and Postal Services (Amendment) Act 2001.³⁹ Some laws have been amended in order to suit with the technological changes. According to the Prime Minister Datuk Seri Najib Tun Razak, the media had an important responsibility to deliver news and information correctly and in a timely manner. This is because the Government also depended on the media to inform the people of its policies and programmes, and engage in effective communication. Hence, it is timely for the Government to review its current media censorship laws as the method now is no longer effective.⁴⁰

For Muslims, there are basic guidelines on communication as mentioned above. The provisions in the Holy Quran and Hadiths of the Prophet s.a.w are sufficient to guide the Muslims especially journalist to write properly and to deliver correct information to the public. Even the news has to be filtered before its publication. This is to avoid any influences or

³⁸ Norashikin Mohd Yusof, Islam In ICT Era A More Active Role Is Expected And Promoted , [2002] MLJ

³⁹ <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwemal.htm> viewed 10 August 2011

⁴⁰ Shazwan Mustafa Kamal, Najib: Censorship no longer 'effective' ,needs review, 15 August 2011 at <http://www.themalaysianinsider.com/malaysia/article/najib-censorship-no-longer-effective-needs-review>, viewed on 18th August 2011.

incorrect messages news given to the public. This requirement is mentioned in the Holy Quran (AlHujurat (45): 6) and (60:1)

As mentioned earlier, the advancement of technology has created more opportunities to the people. It has also improved the economic position and knowledge of the society. However, some people including the Muslims have misused the technology and the new media to commit crimes and other immoral activities. Not only that, the Internet has to certain extent influenced some Muslims on the way they think and dress, their belief (aqidah) and their way of life. Many Hence, it is common to see many hours have been spent on the Net. Further, the cyber Islamic environments have also exposed Muslims to radical and new influences outside of traditional spheres of knowledge and authority, causing long-standing paradigmatic shifts at a grassroots level within societies.⁴¹ As a result, the Muslims are facing many crises including the social crises.⁴²

The unlimited access to certain websites containing immoral or illegal activities has influenced the Internet users to venture into new things. The children and the teenagers can easily become the Internet victim. According to the US Department of Justice, the perpetrators use the Internet to expose youth to child pornography and encourage them to exchange pornography and enticing as well as exploiting children for the purpose of sexual tourism (travel with the intent to engage in sexual behavior) for commercial gain and/or personal gratification.⁴³ In some cases, the teenagers or adult may also involve in immoral activities with their partners

⁴¹ Vit Sisler, The impact of the Internet on the Muslim world at <http://en.harakahdaily.net/index.php/articles/art-a-lit/534-imuslims-rewiring-the-house-of-islam.html> viewed on 13 September 2011

⁴² See Hashim Mehat, Umat Islam dilanda krisis, Prosiding Seminar Kebangsaan Fiqh Semasa 2003: Menghadapi Cabaran Globalisasi, 24-25 September 2003, Universiti Kebangsaan Malaysia dan Kolej Islam Selangor 2003 , ms 28-44

⁴³ See 'Types of Internet Victimization', US Department of Justice at http://www.ojp.usdoj.gov/ovc/publications/bulletins/internet_2_2001/internet_2_01_4.html viewed on 13 September 2011

whom they just knew from the face book or other social networking sites. As a result, some of them ended with the commission of illegal sexual activities, abortion, theft, suicide⁴⁴ or run away from home. Although those consequences cannot be eliminated there are certain laws enacted by the Government to control the Internet abuses.

The misuse of Internet extends to even marriage institution and pre-marital arrangement between couples. For example, a husband can just send a Short Message System (SMS) to divorce his wife or a wife can even send a message asking for divorce from the husband by using his hand phone. In other words, she is divorcing herself.⁴⁵ And in pre-marital arrangement, the bride to-be can just send an SMS to the groom to- be to cancel their wedding plan and even cancelling the engagement.⁴⁶ These are instances on how technology or new media has affected the Muslims. The image of Islam is tainted with these incidents. However, there are remedies for such acts. The affected parties may claim for monetary compensation and other damages for what he or she has suffered.

Further, the threat to Malaysians and the Muslims is not only on social issues but also on the security system. Although the Malaysian Government is quite secured at present there is still a need to upgrade and improve the knowledge on technology and computer system since Malaysians can be attacked at anytime through cyber war. In China, computer expert are trained to launch cyber attacks against its enemies. By using the Internet the attacks can be launched from anywhere in the world. Thus, the Malaysians must be ready to face this unpredictable

⁴⁴ Lisa Belkin, 'Suicide and the Internet,' 30 September 2010 , The New York Times at <http://parenting.blogs.nytimes.com/2010/09/30/suicide-and-the-internet/> viewed on 13 September 2011

⁴⁵ Mohd Firdaus Ibrahim & Shahrul Redzuan Zulkifli, 'Hantar SMS talak diri sendiri' at <http://www.hmetro.com.my/articles/HantarSMSStalakdirisendiri/Article> viewed on 13 September 2011

⁴⁶ Faizal Nazaruddin, 'Tunang batal nikah melalui SMS' at http://www.kosmo.com.my/kosmo/content.asp?y=2011&dt=0606&pub=Kosmo&sec=Negara&pg=ne_01.htm viewed on 13 September 2011.

situation. Hence, it is important to have knowledge on handling sophisticated technology and the computer system in order to avoid untoward incidents such as cyber attacks and cyber terrorism.

The Legal issues in Cyber Environment

There are many legal issues in cyber environment. Some issues have been mentioned above. However, this paper will explain further on type of cyber offences as happened not only in Malaysia but also in other countries. Among the cyber offences or cyber crimes are computer fraud, hacking, violation of privacy, online defamation, online child pornography, internet gambling and many others. These offences or cyber crimes are committed by using a computer as a medium or tool. Sometimes the computer itself becomes the victim.

In order to control and combat the cyber crime activities, several laws or the cyberlaws have been enacted by the Malaysian government. The cyberlaws include Computer Crimes Act 1997 (CCA), Copyright (Amendment) Act 1997, Communication and Multimedia Act 1998, Digital Signature Act 1997, Optical Discs Act 2000 (ODA), Telemedicine Act 1997, Communication and Multimedia Commission Act 1998 (CMCA), Electronic Commerce Act 2006, Electronic Government Activities Act 2007 (Act 680) and Personal Data Protection Act 2010. These laws are applicable whenever necessary and sometimes the court will also refer to the conventional laws such as the Penal Code, the Internal Security Act (previously applied but already abolished in September 2011), Defamation Act and Sedition Act to solve cyber related cases.

The following are the cyber offences and the law governing such offences:

- a) Computer fraud

Originally, fraud is committed by conventional way. But with the development in new technology computer fraud is committed against an individual and corporate body for financial gain. The corporate bodies may suffer huge losses due to computer fraud activities. Other types of fraud include misuse of Automated Teller Machine (ATM) cards, credit cards and electronic fund transfers. In Malaysia, there is no specific provision in the cyberlaws on computer fraud. Thus, the suspect is usually investigated under the Criminal Procedure Code and charged under the Penal Code. Furthermore, the Attorney General (A-G) has also proposed that there should be a new agency or specific body to handle fraud cases as current focus of law enforcement agencies was too wide. In the UK for instance, there is a specific agency or National Fraud authority that handles cases on fraud.⁴⁷

Islam prohibits online fraud and gaining wealth of others by illegal means. This is affirmed by Allah s.w.t in Surah An Nisa (4:29) when He says,
‘O you who believe eat not up your property among yourselves in vanities, but let there be among you traffic and trade by mutual goodwill’

b) Hacking,

This offence involves unauthorised access to other’s computer system. The hacker may be charged either under section 3 or 4 of the CCA 1997. Section 3 deals with unauthorized access offence while section 4 deals with unauthorised access with intent or aggravated hacking. In other words, this section emphasises on the unauthorised access with the intention to commit fraud or dishonesty or to cause injury as defined by the Penal Code.

⁴⁷ “A-G: Have new agency for fraud cases”, Malaysian Law at <http://malaysianlaw.my> 20th September 2011

The penalty for offence committed under section 3 is liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both while under section 4, if a person is found guilty of an offence he shall pay a fine not exceeding one hundred and fifty thousand ringgit or face imprisonment for a term not exceeding ten years or both.⁴⁸ Further, the time when the offence is committed does not depend on the time of the unauthorised access. However, the CCA 1997 is silent on the punishment for repeated offences. It will be an effective deterrent if a stiffer punishment is provided under the Act.

In Islam, prohibition on hacking or unauthorized access can also be found in the Holy Quran when Allah s.w.t. says in Surah An-Nur, (24:27-28),

‘O you who believe, do not enter houses other than your own, until you have asked permission and saluted those in them: that is best for you, in order that you may heed what is seemly. If you find no one in the house enter not until permission is given to you ; if you are asked to go back, go back: that makes for greeter purity for yourselves: and Allah knows well all that you do’.

Although the concept of access in the above verse refers to physical access it can still be applied in cases where one intends to access other’s property such as the computer or Internet sites. The permission or consent is the requirement that needs to be fulfilled before the access.

c) Internet defamation and blogging

⁴⁸ See Duryana Mohamed and Juriah Abdul Jalil, *Violation of Cyberlaws and Computer Ethics: Consequences and Potential Legal Actions*. International Conference on Ethics and Professionalism (ICEP 2010), Equitorial Hotel, Bangi, organized by UKM, Bangi, Selangor. 1st & 2nd December 2010 . See also *Navaseelan Balasingam v Public Prosecutor* [2007] 1 SLR 767.- on illegal withdrawal from ATM machines.

Defamation refers to a bogus statement made about someone or an organisation that is damaging to their status or reputation. The person publishing the statement must have known or should have known that the statement was false. Under the law, a person is guilty for defamation if it can be proved that the words are defamatory, the words refer to the plaintiff/victim, and finally the words must be published. However, in Malaysia, there is no specific legislation that deals with defamation on the internet.⁴⁹

There are few cases of internet defamation in Malaysia and some of them involve bloggers. The bloggers writings may sometimes contain elements of threat to national security and uttered in seditious words. Under the law, if such words amount to defamatory statement he or she can be arrested and can be charged under any of the following laws namely, the Sedition Act 1948, the Penal Code (s499: criminal defamation) or Communication and Multimedia Act 1998 (CMA) (ss112⁵⁰ and 233⁵¹)⁵², Defamation (civil

⁴⁹ See further Defamation Act 1957 and Aishath Muneeza, Freedom of Blogging in Malaysia: Are there any legal boundaries?, [2011] 4 MLJ iv

⁵⁰ Section 112 may be applicable to bloggers who tend to publish any obscene material such as pornography or offensive materials. But, the section has not yet been tested in the court of law. According to sub-s (1) of section 112, 'no content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person'. Sub-section (2) of the same section furthermore states that 'a person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction'.

⁵¹ Another relevant section is s 233 which provides that ; (1) A person who -- (a) by means of any network facilities or network service or applications service knowingly -- (ii) initiates the transmission of, (a) any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or (b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, commits an offence. (2) A person who knowingly - (a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or (b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a), commits an offence. (3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.

⁵² Aishath Muneeza, The Milestone Of Blogs And Bloggers In Malaysia, 2010] 3 MLJ cvii

under Defamation Act 1957), Copyright infringement, CMA 1998 (s211) and Penal Code (various sections apply covering distribution of obscene materials, cheating and criminal intimidation). The Sedition Act has been used repeatedly to charge opposition leaders from Democratic Action Party ('DAP') such as Fan Yew Teng in 1977, Oh Keng Seng in 1980 and Lim Guan Eng in 1998.⁵³

It is undeniable that some bloggers are right when they express their opinion for the sake of justice and for freedom of their country. But, not all of them are safe and protected by the law. Some of them were arrested and charged in court. In case of Raja Petra, for instance, as an editor of *Malaysia Today* he wrote on politics and critiques of alleged wrongdoing by public officials. However, he was arrested on September 12 under section 73(1) of the Internal Security Act 1960 (ISA) for allegedly being a threat to security, peace and public order. Finally, after few court hearings he was acquitted. Other Malaysian bloggers that involved in defamation suit are Jeff Ooi (Screenshots) and Ahiruddin Attan, Rocky (Rocky's Bru) who were sued by the New Straits Times (NST) along with other members of the NST in mid January 2007.⁵⁴ Thus, the bloggers must be aware of the laws because they may be charged under copyright infringement; or trademark, internet defamation or sedition or the ISA. They may also face other legal risks such as fraud, breach of confidentiality and misrepresentation.⁵⁵

⁵³ Aishath Muneza, *The Milestone Of Blogs And Bloggers In Malaysia*, 2010] 3 MLJ cvii

⁵⁴ Aishath Muneza, *Freedom of Blogging in Malaysia: Are there any legal boundaries?*, [2011] 4 MLJ iv

⁵⁵ Sabrina Mohamed Hashim, *Bloggging - Are You Exposing Yourself To Legal Liabilities?* [2007]2 CLJ i

It is no doubt that through the Internet one can express himself freely. However, this freedom of expression should not be misused by trying to spread bad news or propagating bad elements. If the user is a Muslim he should be more caution and use the medium wisely. In Islam, back biting and false accusation are serious crimes. Allah s.w.t. prohibits defamation when He says in Surah Al Hujurat (49:11),

“ O ye who believe! Let not some men among you laugh at others. It may be that the (latter) are better than the (former). Nor let some women laugh at others; It may be that the (latter) are better than the (former). Nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames, Ill seeming is a name connoting wickedness (to be used of one) after he has believed. And those who do not desist are (indeed) doing wrong.”

And in Surah Al Hujurat (49:12), Allah s.w.t says,

‘ Do not spy on one another, nor let any of you backbite others. Would one of you like to eat his dead brother’s flesh? You would loathe it! Heed Allah, for Allah is relenting, Merciful’.

The above verse aims to protect one’s right and dignity.

d) Privacy and its violation

Privacy can be defined as a right to be alone and free from any disturbance.⁵⁶ There are many types of privacy such as information privacy that requires data protection law to protect it, bodily privacy, privacy of communications and territorial privacy.⁵⁷ This right is not clearly

⁵⁶ Warren, A.D. and Brandeis, L.D., (1890) 'The Right to Privacy', Harvard Law Review (4), pp 193-220.

⁵⁷ Nehaluddin Ahmad, The right to privacy and challenges: A critical review, [2008]5 MLJ cxxi

defined under the Malaysian law but there is penalty for violating one's privacy. Section 509 of the Penal Code provides criminal penalties for insulting the modesty of any person or intruding upon the privacy of [any] person by uttering any word, sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person.⁵⁸ Since the existing privacy protections in Malaysia, are only in limited circumstances such as in the Penal Code, Communications and Multimedia Act 1998 and the law of confidence it was suggested that there is a need to have a specific piece of legislation that expressly grants the Malaysians the right to privacy and Malaysia, having adopted the Universal Declaration of Human Rights, should go a step further by amending the Constitution to guarantee the individual right to privacy.⁵⁹

In law, the effect of violating the privacy right of an individual is different from companies. For individual, one may rely on the Personal Data Protection Act 2010, the Penal Code or the CMA 1998. However, in Islam or from the Syariah perspective the scope and concept of privacy is different.⁶⁰ In fact, the Muslims must know that there are two types of rights namely, rights of Allah s.w.t or public rights and right of Individual or private rights. Violations of these rights are against the Shariah Law.

Insult on Islam and renunciation of Islam as religion

Crimes such as renunciation of Islam or insulting Islam can be done by way of electronic mail or Short Message System (SMS). This is a crime against Islam and falls within the Syariah

⁵⁸ Duryana Mohamed and Jariah Abdul Jalil, *Violation of Cyberlaws and Computer Ethics: Consequences and Potential Legal Actions*. International Conference on Ethics and Professionalism (ICEP 2010), Equitorial Hotel, Bangi, organized by UKM, Bangi, Selangor. 1st & 2nd December 2010

⁵⁹ Joanna Loy, "Privacy: Does it exist in Malaysia?" 11 March 2009 Is it time to legislate?, 11 March 2009 at http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=21883 retrieved 22 July 2010

⁶⁰ See Huriyyah El Islamy, *Protection Of Online Privacy & Its Impact On E-Commerce*, [2003] CLJ and Abu Bakar Munir & Siti Hajar, *Personal Data Protection : The law and Practice in Malaysia*, Sweet & Maxwell.2010.

Court jurisdiction. Thus, the sender or the maker of the statement can be charged under section 7 of the Syariah Criminal Offences (Federal Territories) Act 1997 if proven guilty. Section 7 of Syariah Criminal Offences (Federal Territories) Act 1997 provides that;

‘ Any person who orally or in writing or by visible representation or in any other manner-

(a) insults or brings into contempt the religion of Islam;

(b) derides, apes or ridicules the practices or ceremonies relating to the religion of Islam;

or

(c) degrades or brings into contempt any law relating to the religion of Islam for the time being in force in the Federal Territories,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or both.’

However, the above matter is not discussed in detail in Syariah Court. In fact, matters that involve cyber offences are referred to civil court and the suspect is charged either under the Penal Code or Computer Crimes Act 1997 (CCA) or the Communications and Multimedia Act 1998 (CMA).

In October 2010,⁶¹ the Malaysian Communications and Multimedia Commission fined Sistem Televisyen Malaysia Berhad (STMB) or TV3 RM50,000 for its controversial Hari Raya advertisement Sinari Lebaran that had allegedly "humiliated and insulted" Islam. TV3 had removed an advertisement before Hari Raya Aidilfitri following objections from several Muslim groups, who complained that it contained elements of Christmas and it was degrading to Islam.

⁶¹ See “TV3 fined RM50,000 over Raya ad” 26th October 2010 at <http://www.nst.com.my/nst/articles/13ls/Article>

This case was investigated under Section 206 (3) of the Communication and Multimedia Act 1998.

Other Types Of Cyber offences

Other than the above offences, phishing and distributing obscene materials are also considered as cyber offences. Phishing is equivalent to stealing other's money or property while sex videos involving political figures like Datuk Dr Chua Sio Lek and YB Elizabeth Wong are obscene materials which should be banned because these acts are against public moral. Further, there is online child pornography where the offence is committed by using and targeting children as victim.⁶² In US, there are several laws that protect the child from such offences and the Acts include Child Pornography Prevention Act (CPPA) of 1996, the Protection of Children from Sexual Predators Act of 1998, and the Protection Act of 2003.⁶³

The Position Of The Perpetrators Under The Law

Under the law, the crimes or any wrongful acts must be established by reliable evidence. In criminal cases, the evidence submitted must be proved beyond any reasonable doubt while in civil cases, the wrongful acts shall be proof on the balance of probability. The witness may also be called to testify in court. Hence, if the crime is proven beyond any reasonable doubt the

⁶² See Margaret A Healy, "Child pornography: An international perspective", 2 August 2004, via Computer Crime Research Center (CCRC), <<http://www.crime-research.org/articles/536>>

⁶³ Duryana Mohamed and Juriah Abdul Jalil, *Violation of Cyberlaws and Computer Ethics: Consequences and Potential Legal Actions*. International Conference on Ethics and Professionalism (ICEP 2010), Equitorial Hotel, Bangi, organized by UKM, Bangi, Selangor. 1st & 2nd December 2010

suspect or the accused will be punished accordingly. The Penal Code for instance, provides for offences such as abetment, criminal conspiracy, contempt of the lawful authority of public servants, false evidence against public justice, defamation, criminal breach of contracts of service, criminal intimidation, insult and annoyance and many other offences. This Code is also referred to when the case involve cyber offences such as defamation and computer fraud.

Other than the Penal Code, the perpetrators or suspect may also be charged under any of the following laws namely, the Defamation Act, Sedition Act, the Computer Crimes Act 1997 or the Communications and Multimedia Act 1998. If the matters involve copyright infringement then the Copyright Act 1999 will apply. Since the ISA was abolished and will be replaced with two new laws which are in line with Article 149 of the Federal Constitution,⁶⁴ the perpetrators may also be liable under any of these laws.

Cyber offences under the Shariah Laws

The Shariah laws are the laws originated from the Divine revelation and other sources. The primary sources of Shariah or Islamic laws are the Holy Quran and the Sunnah of the prophet s.a.w. While the secondary sources include *Al-Ijma'* (consensus of opinions), *Al-Qiyas* (analogical deduction), *Al-Ijtihad* (an effort to arrive at one's own judgment), *Istihsan* or *Istislah* or *Masalih Mursalah* (Public interest), *Istishab* (legal presumption), *Sadd-al-Dharai* (blocking the ways) and *Urf* and *adat* (custom).⁶⁵ The Shariah law uphold the concept of justice when Allah says in Surah Al-Hadid (57) : 25,

⁶⁴ "Two new laws to replace Internal Security Act", The Star Online, 16 September 2011 at <http://the star.com.my/>

⁶⁵ Abdur Rahman I-Doi, *Shariah: The Islamic Law*, A.S Noordeen, 1984

'We sent aforetime our Messengers with clear signs and send down with them the Book and the Balance (Of right and wrong) , that men may stand forth in justice'

This concept shall be applied in cases where there are crimes committed against an individual or society. There are several types of crimes punishable under the Shariah laws. The crimes include homicide, adultery, defamation, highway robbery, theft, intoxicant, apostasy and running away from the battle field.⁶⁶ However, crimes committed in cyber environment such as hacking, web defacement, child pornography are not mentioned specifically in the Holy Quran or hadith. There is also no specific provision on punishment for cybercrimes. But there are certain verses that can be referred to on crimes against individual and society.

In addition, there is also no specific provision for cyber offences and its punishment under the Syariah Criminal Offences (Federal Territories) Act 1997 and Syariah Criminal Procedure (Federal Territories) Act 1997.⁶⁷ Nevertheless, as Muslims it is important to understand and observe the following Surah Ali Imran (3): 104, when Allah s.w.t says,

'Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong; They are the ones to attain felicity'

Further, In Islam punishment is the best way to safeguard society against crimes and it is considered as social necessity. Allah s.w.t says in Surah An Nisa: 123;

'Whoever works evil, will be requited accordingly'

⁶⁶ Ibid at Chapter 16

⁶⁷ See Part II, III, IV and V of the Syariah Criminal Offences (Federal Territories) Act 1997. Besides Sch 9 List II, item 1 of the Federal Constitution the jurisdiction of Syariah courts on criminal matters is also governed by sections 46(2)(a) and 47(2)(a) of the Administration of Islamic Law (Federal Territories) Act 1993. While section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 (revised 1988) prescribes the method of punishment for each offences. See Duryana Mohamed, Electronic Evidence in ICT Environment in Malaysia: A study on Procedure and Admissibility, unpublished PhD thesis (UIAM) 2008.Chapter 7.

Although the Shariah statutes do not provide specific punishment for cyber offences, one can still refer to the conventional law such as the Penal Code and the cyberlaws. Hence, if a Muslim commits hacking or other type of cybercrimes such as insulting Islam he shall be punished accordingly by the civil courts. The Shariah Courts have a very limited powers and jurisdictions to hear such cases.⁶⁸ However, this will depend on the circumstances of the case. In one case, a blogger has insulted Islam on the issue of *Islam hadhari*. But, he was just released after the investigation done by the officer in charge. (See case Jeff Ooi above).

Nevertheless, in matters involving divorce by SMS or email, there is remedy under the law. The couples who involve in divorce by SMS can go to the court to verify the divorce or *talak*. The court requires an admission or confession by a husband. The husband is required to come to the Syariah Court and make a confession by taking an oath or *iqrar* that he has divorced his wife through for example, the Short Message System (SMS),⁶⁹ telephone⁷⁰ or electronic mail (e-mail).⁷¹ If the SMS is sent by the husband from another jurisdiction or from another country, the pronouncement of *Talaq* is not valid unless and until he takes an oath and clearly states his

⁶⁸ Farid Sufian Shuaib, *Powers and Jurisdiction of Syariah Courts in Malaysia*, Malayan Law Journal, 2003

⁶⁹ See (unreported) cases from the Syariah Subordinate Court, Federal Territory, Kuala Lumpur. (1) Case No.14002-054-0329-2004 between Abdul Rahman b. Shaari and Halimah Sulaiman and (2) Case No. 14002-054-0146-2004 between Waheedah Beevi bt T Baratty@ Hanifa and Mohd Barathan Bin Abdullah. The Hanafi school of laws classified writing into two namely, clear writing on paper, wall or on earth and the other is a writing on air or water. The clear writing is further divided into two types namely, a normal letter written by a husband to his wife containing her name and addressed to her and another type is just a statement by the husband that he divorced his wife. The wife name and her address are not mentioned. If the writing is clearly written, the *talaq* is valid although there is no intention by the husband to divorce. However, if there is no writing and no intention but just utterance the *talaq* is known as *kinayah* and not valid unless, with the intention by the husband. See Syed Ahmad Syed Hussai and Ahmad Shahbari Salamon, (translator) of book by Wahbah al-Zuhayli, *Fiqh dan Perundangan Islam*, Jilid VII, Dewan Bahasa dan Pustaka, Kuala Lumpur, 2001 pp501-502. These decisions show that Islamic law is adaptable to electronic or ICT environment.

⁷⁰ See (unreported) Case No.14002-054-0252-2004 between Shahrul Bahrin Bin Mohammad and Aisyah Seit Bt Abdullah, Syariah Subordinate Court, Federal Territory, Kuala Lumpur.

⁷¹ See (unreported) Case No.14002-054-0418-2004 between Azira bt Azizan and Rizal Ismadi bin Ismail, Syariah Subordinate Court, Federal Territory, Kuala Lumpur.

intention to divorce his wife. The taking of an oath or *iqrar* must be witnessed by two witnesses who are reliable and trustworthy.⁷²

For would be married couples, the affected party may file a lawsuit against the other party and claim for damages on what they have suffered. And for cases on theft or abortion if the suspect can be identified he or she can be charged and prosecuted under either the Penal Code (theft) or other law on abortion.

Since crimes such as fraud, forgery, theft and criminal defamation are covered by the Penal Code and hacking offences are covered by the CCA 1997, it is submitted that there is no need to insert new provisions in the SCO(FT) Act 1997. Although an attempt to include such offences in the Syariah Criminal Offences Act may be done this act however, may create conflict of jurisdiction since Article 121A of the Federal Constitution clearly lays down the extent of the powers and jurisdiction of the Syariah Courts in Malaysia.⁷³ The lack of specific provisions on cyber-related offences in the Syariah statutes can be considered as a lacunae since many Muslims are and will be exposed to Internet abuses and cyber attacks.⁷⁴

Conclusion

⁷² In Islam, a divorce (*talaq*) by sending the SMS is considered as not clear or *kinayah* because it does not fulfill two requirements of divorce, that is the utterance of *talaq* (*lafaz* or *sighah*) and intention or *qalad* of the husband. See *Zainab binti Mahmood v Abd. Latif b Jusoh* (1993) Jurnal Hukum (JH), 297 and Mohd Nasran Mohamad & Mohd. Naim Mokhtar, 'Perceraian melalui SMS dari sudut Fiqh dan Undang-undang keluarga Islam' (p331), Prosiding seminar kebangsaan Fiqh semasa 2003: menghadapi cabaran globalisasi, 24-25 September 2003, Jabatan Syariah, Fakulti Pengajian Islam, University Kebangsaan Malaysia.

⁷³ See also Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) for states in Peninsular Malaysia and Syariah Courts (Criminal Jurisdictions) (Amendment & Extension Act) 1989 for Sabah and Sarawak. Also List II of the State List of Ninth Schedule to the Federal Constitution.

⁷⁴ Duryana Mohamed, Electronic Evidence in ICT Environment in Malaysia: A study on Procedure and Admissibility, Unpublished PhD thesis (2008) UIAM. Chapter 7

New development in technology and the creation of new media have good and bad effects to the society. The good effects are people can interact and work easily by using technology. In fact, the teachings of Islam can be conveyed to anybody without border. However, the bad effects are the society is exposed to many illegal and immoral activities such as the commission of cybercrimes, degradation of moral value, social crises, destruction of marriage institution and insult on Islam. In fact, these cyber threats are the problems of today and the future which needed to be addressed in a comprehensive manner. Hence, Malaysia cannot stand alone. There is a need to have strategic alliances to deal with threats and vulnerabilities in the cyberworld. Coordination and collaboration from all parties is important in order to enhance the security of Malaysia's cyberspace.⁷⁵ For Muslims, they must always be careful and try to avoid evil influences when using the new media in the cyber environment.

⁷⁵ Zahri Yunos, The reality of cyberthreats , In tech, The STAR, 23 September 2008 at http://www.cybersecurity.my/data/content_files/13/420.pdf?.diff=1222220101