

INTERNATIONAL CONFERENCE ON FAMILY LAW, FAMILY
JUSTICE AND MAQASID AL-SHARI'AH 2021

“LIKE, COMMENT, SHARE... AND GUILTY AS CHARGED”

WHY SOCIAL MEDIA USERS SHOULD RELOOK AT
SECTION 233 CMA 1998

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يُونَيْتِي اِسْلَامًا اَبْتَارًا اِبْحْسَابًا مِلْدِيَنِيَا

Garden of Knowledge and Virtue



Presentation Agenda

- 01 Background**
- 02 Research Questions**
- 03 Internet Governance**
- 04 Offensive Content**
- 05 Constitutionality**
- 06 CMA & Social Media**



Background Objective Credit

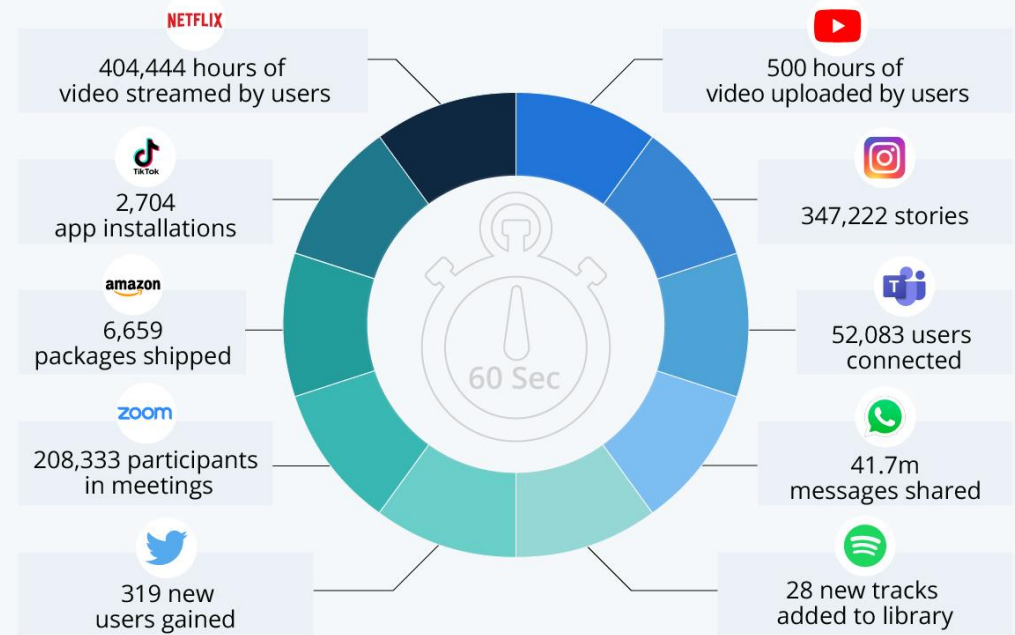
The use of **social media** is a norm of communications today, especially among youths in Malaysia. The activity of creating, publishing and sharing of digital content through social media may lead to some **legal consequences** based on the laws currently in force on Internet, social media and other areas.

This paper sets as an **objective** examining the extent of the application of **section 233** of the Communications and Multimedia Act (CMA) 1998 on social media-related offences making reference to cases decided in Malaysian courts. Even though not all those cases involve youths (either as accused or victim), yet they provide **helpful guidance** for all members of society who increasingly adopt digital lifestyle epitomised in the day-to-day use of social media. This **case-based study** is ultimately significant to help us understand the implications of law amid the changing circumstances brought about by the technology.

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A Minute on the Internet in 2020

Estimated amount of data created on the internet in one minute



Source: Visual Capitalist



statista

JAN 2020

DIGITAL AROUND THE WORLD IN 2020

THE ESSENTIAL HEADLINE DATA YOU NEED TO UNDERSTAND MOBILE, INTERNET, AND SOCIAL MEDIA USE

TOTAL POPULATION



7.75
BILLION

URBANISATION:
55%

UNIQUE MOBILE PHONE USERS



5.19
BILLION

PENETRATION:
67%

INTERNET USERS



4.54
BILLION

PENETRATION:
59%

ACTIVE SOCIAL MEDIA USERS



3.80
BILLION

PENETRATION:
49%

SOURCES: POPULATION: UNITED NATIONS; LOCAL GOVERNMENT BODIES; MOBILE: GSMA INTELLIGENCE; INTERNET: ITRU, GLOBALWEBINDEX; GSMA INTELLIGENCE; LOCAL TELECOMS REGULATORY AUTHORITIES AND GOVERNMENT BODIES; APPL: KEPIOS ANALYSIS; SOCIAL MEDIA: PLATFORMS' SELF-SERVICE ADVERTISING TOOLS; COMPANY ANNOUNCEMENTS AND EARNINGS REPORTS; CAFEBAZAAR; KEPIOS ANALYSIS; ALL LATEST AVAILABLE DATA IN JANUARY 2020. COMPARABILITY ADVISORY: SOURCE AND BASE CHANGES.

we are social **Hootsuite**

JAN 2020

SHARE OF TIME SPENT IN MOBILE APPS BY CATEGORY

AVERAGE TIME SPENT USING MOBILE DEVICES EACH DAY WORLDWIDE, WITH SHARE OF TIME SPENT IN TOP MOBILE APP CATEGORIES

AVERAGE TIME SPENT USING MOBILE DEVICES EACH DAY



3H 40M

SHARE OF MOBILE TIME SPENT IN SOCIAL & COMMUNICATIONS APPS



50%

SHARE OF MOBILE TIME SPENT IN VIDEO & ENTERTAINMENT APPS



21%

SHARE OF MOBILE TIME SPENT PLAYING GAMES (ANY GAME KIND)



9%

SHARE OF MOBILE TIME SPENT USING OTHER KINDS OF APPS



19%

SOURCE: APP ANNIIE, "STATE OF MOBILE 2020" (JANUARY 2020). NOTE: FIGURES ARE BASED ON USE OF ANDROID DEVICES ONLY. PERCENTAGES DO NOT SUM TO 100% DUE TO ROUNDING.

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JAN 2019

E-COMMERCE SPEND BY CATEGORY

THE TOTAL ANNUAL AMOUNT SPENT ON CONSUMER E-COMMERCE CATEGORIES, IN U.S. DOLLARS



FASHION & BEAUTY



\$771.0
MILLION

TOYS, DIY & HOBBIES



\$486.0
MILLION

ELECTRONICS & PHYSICAL MEDIA



\$851.0
MILLION

TRAVEL (INCLUDING ACCOMMODATION)



\$2.759
BILLION

FOOD & PERSONAL CARE



\$483.0
MILLION

DIGITAL MUSIC



\$30.00
MILLION

FURNITURE & APPLIANCES



\$553.0
MILLION

VIDEO GAMES



\$100.0
MILLION

SOURCE: STATISTA DIGITAL MARKET OUTLOOK FOR E-COMMERCE, E-TRAVEL, AND DIGITAL MEDIA INDUSTRIES (ACCESSED JANUARY 2019). NOTES: FIGURES ARE BASED ON ESTIMATES OF FULL-YEAR CONSUMER SPEND FOR 2018, EXCLUDING B2B SPEND. FIGURES FOR DIGITAL MUSIC AND VIDEO-GAMES INCLUDE STREAMING. ADVISORY: STATISTA HAVE REVISED THEIR FIGURES FOR 2017 SPEND SINCE LAST YEAR, SO THESE FIGURES WILL NOT BE COMPARABLE TO DATA WE REPORTED IN OUR DIGITAL 2018 REPORTS.

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Digital Malaysia Outlook:

Ecosystem is ripe ... digital population, connectivity, devices, usage

DIGITAL POPULATION

68% of population are active internet users

20.6m active internet users (out of 30.5m population)



CONNECTIVITY

30% of households

2.2m total connections

143% of population

43.4m total connections

22.7m unique users

Average of 1.9 connection per user



Household connection



Mobile connection

DEVICES (of adult population)

71% Smartphones

35% Laptop/desktop

14% Tablet

1% Wearables



USAGE

77% of active internet users daily internet usage

4 hours 38 mins PC/tablet

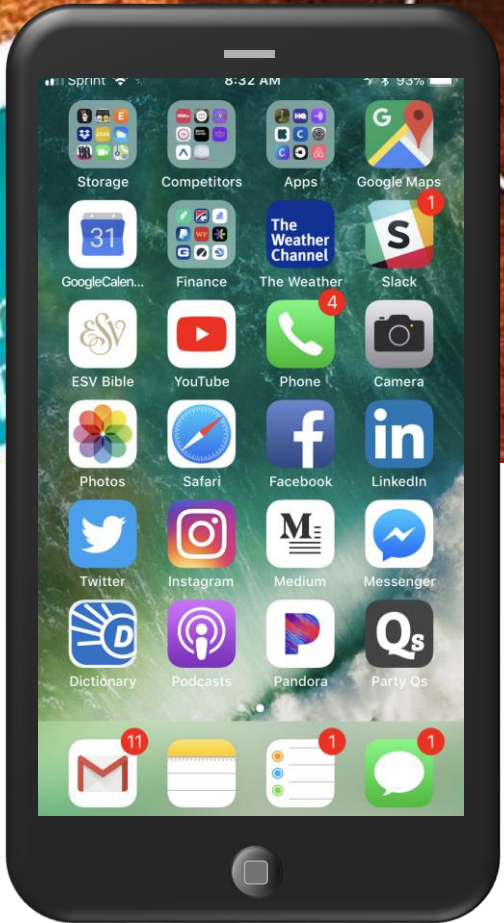
3 hours 37 mins Mobile



Source: Malaysia digital outlook (Jan 2016) – McKinsey and Google analysis



RESEARCH QUESTIONS



What are the laws that regulate the usage of social media in Malaysia?



Is section 233 CMA constitutional?



What amounts to offensive content in Malaysia?



How does section 233 CMA 1998 apply in the context of social media?

Internet Governance in Malaysia



- Internet No-Censorship Policy
- Website blocking under s.263 CMA 1998
- Imposing Criminal sanctions for offensive content
- Self-regulatory mechanism by the Content Code

COMMUNICATIONS AND MULTIMEDIA ACT 1998 (Act 588)

The main legislation put in place to impose obligations on the use of the Internet in Malaysia

Offensive Content

233. (1) A person who -

(a) by means of any network facilities or network service or applications service knowingly -

- (i) makes, creates or solicits; and
- (ii) initiates the transmission of,

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.



The Constitutionality of CMA 1998?

**Nor Hisham bin
Osman v Pendakwa
Raya**
[2010] MLJU 1249

“such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence”

“this limitation is both necessary and expedient in accordance with the objectives put up by Article 10(2)(a) of the Constitution”

**Syarul Ema Rena binti
Abu Samah Iwn
Pendakwa Raya**
[2018] MLJU 1128

s.233 CMA should be viewed and interpreted within the local context and circumstances, taking into account the objectives and principles surrounding the legislation of the Act, and one of them is ‘to promote a civil society where information-based services will provide the basis of continuing enhancements to quality of work and life.’

s.233(1)(a) passed the test of clarity, limitedness and proportionality as the law has prescribed a reasonable classification on the type, scope and applicability of the offence.

**Mohd Fahmi Reza bin
Mohd Zarin Iwn
Pendakwa Raya**
[2020] 7 MLJ 399

Although it was a fine and creative work of art created by the appellant to criticise the government and the authorities, it was produced with the intent to injure others. Such communication cannot be considered a parody because it fails to fulfil the meaning of the word ‘parody.’

The relevant communication may be an artistic expression but due to its annoying nature, then it should not be unlawfully publicised by the appellant and therefore is not protected by the Constitution. It is not for the artist to decide, but ultimately it is for the Court to decide.

Section 233 CMA In the Context of Social Media

Your Page, Your Responsibility

Section 114A Evidence Act 1950;
YB Dato' Hj Husam bin Hj Musa
v Mohd Faisal bin Rohban
Ahmad [2015] 3 MLJ 364

Use of Emoticons
'any comment, request,
suggestion or other
communication'



Actual Annoyance Not Required

PP v Rutinin Suhaimin [2013]
2 CLJ 427; Mohd Fahmi
Reza bin Mohd Zarin Iwn
Pendakwa Raya [2020] 7
MLJ 399.

Copy-Pasting

'knowingly makes, creates or solicits;
and initiates the transmission of any
comment, request, suggestion or
other communication.'

A Platform-Neutral Law

Section 6 of the CMA 1998

CONCLUSION

This Paper:



Re-contextualises s. 233 CMA 1998 in social media environment today



Discusses the judicial guidance derived from some latest cases decided by Malaysia courts



Calls the Malaysian digital society, and the youth more particularly, to be more responsible in using social media so as to reap the best of the digital economy.

"In this day and age of Internet where with free flow of information from cyber space, young people are exposed to things which the older generation could not have imagined.

Such exposure had no doubt also made the art of parenthood much more difficult in dealing with such social issues... (and) in some cases, it had made it impossible.

The value of society changes as each year passes by and because of such change, it of course has made the job of Court much more difficult especially on such issues."

per Datuk David Wong Dak Wah J, High Court (Kota Kinabalu) in *Public Prosecutor v Zainuddin bin Adam* [2012] MLJU 684.

Judicial Quotes

"Cyber offences are serious offences, as offensive materials in cyber offences could be easily disseminated to the public at large within seconds at a touch of a button"

Ahmad Bache JC of the High Court (Kota Bharu) in *Nik Adib bin Nik Mat v Public Prosecutor* [2017] MLJU 1831



THANK YOU
TERIMA KASIH

شُكْرًا كَثِيرًا

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