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Consumer Protection in E-Commerce in Malaysia: An Overview

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Introduction

Electronic Commerce or e-commerce has received much attention from governments, businesses and regional bodies. This importance has been attributed to several converging factors. According to Ding (1999), these factors include: first, the development of the use of the Internet as a means by which information is disseminated and through which communication and connectivity is enabled; and second, the affordability of personal computers, increase in their computing capability, and the wide use of open standards.

In the business environment, traditionally there is a need for a tangible and permanent form of communication in a transaction between buyer and seller. However, in e-commerce there is the ability to communicate in an electronic form where a computer is able to recognize, reproduce and store means that business could now be conducted in a paperless environment. Electronic commerce is the process of trading across the Internet, that is, a buyer visits a seller's website and makes a transaction there. Less rigidly it includes deals where the Internet plays some role, for example, assisting the buyer in locating or comparing products and/or sellers.

(http://www.apec.org/apec/apec_groups/som_special_task_groups/electroniccommerce.html. Accessed on 13/2/04)

This new mode of transaction has raised several concerns for governments, businesses, and consumers. In addition, there is a need for international standards as the e-market transcends any national border. Governments are grappling with regulatory guidelines and frameworks in an environment of rapid technological changes in order to promote e-commerce as well as to ensure the occurrence of smooth commercial transactions. In all of this advancement, consumer protection cannot be overlooked. Without the confident e-consumer, there would be no e-commerce. Thus it is imperative to ensure that the online traders observe specific rules and guidelines to allay the fears of the consumer and promote ethical online transactions.

Global Reach estimated 619 million people, some 10% of the world's population had Internet access as of September 2002 (<http://www.greach.com>. Accessed on 13/2/04). There can now be few in the developed world who do not have access to Internet-connected computers at home, work, or through facilities such as public libraries and cybercafes. According to the International Data Corporation, nearly one billion people or 15 percent of the world's population will be using the Internet by year 2005, and it is expected their use will fuel more than \$5 trillion in Internet commerce. Although electronic commerce is currently in its infancy, research and reports suggest that it is growing rapidly.

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Benefits of E-Commerce

The main opportunities of e-commerce to businesses and corresponding benefits to consumers include:

- Worldwide access and greater choice
- Enhanced competitiveness and quality of service
- Mass customization and personalized products and services
- Elimination of intermediaries and product availability
- Greater efficiency and lower costs
- New business opportunities and new products and services

Consumer concerns

The primary concerns for the consumer include:

- Consumer's exposure to unfair marketing practices
 - Insufficient information disclosure, for example, refund policies, cancellation terms, warranty information
 - Contract terms, for example, their enforceability
 - Merchandise and delivery practices, for example, failure to perform and lateness
 - Payment, for example, recovering fraudulent charges if credit card information falls into criminal hands
 - Transaction confirmation and cancellation policies, for example, consumer's lack of knowledge on cancellation rights for online transactions, including for mistakenly made purchases
 - Fraud and deception, for example, lack means to authenticate merchandise purchased online.
- Unsafe products
- Insecure payment methods
- Loss of personal privacy
 - Risk misuse of personal information
- Other concerns include computer fraud, hacking, virus, interception and alteration of financial data, and misuse of personal information

These concerns and questions about resolving international disputes become pertinent to the buyer, especially when the sellers can place themselves beyond the reach of national courts. The risks need to be eliminated or minimized.

In general then, this paper examines an overview of existing guidelines on e-commerce in ASEAN¹ and in particular the development of such guidelines in Malaysia. It also provides a brief description of the status and challenges of e-commerce protection for the consumer in Malaysia.

An Overview of E-commerce Guidelines in ASEAN

Issues and Challenges

Asia Pacific Economic Cooperation (APEC) has started an Electronic Commerce Steering Groups (ECSG) programme to maximise the benefits of e-commerce for business in the APEC region, which includes work on data privacy, consumer protection, cyber-security, paperless trading, trade facilitation and spam. Economies have also agreed to increase cooperation with the Organisation for Economic Cooperation and Development (OECD) and the Global Business Dialogue on Electronic Commerce (GBDe), two leading authorities in e-commerce issues. Primary concerns include

¹ The Association of South East Asian Nations that comprises 10 nations
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consumer protection, data privacy, and cyber security. ECSG's programme to maximise the benefits of e-commerce for business in the APEC region includes work on data privacy, consumer protection, cyber-security, paperless trading, trade facilitation and spam.

(http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html.

Accessed on 13/2/04)

- *Consumer Protection*

Nations have realized that for e-commerce to take off, consumer trust in online businesses is essential. The ECSG is building trust in e-commerce by helping to protect consumers from fraudulent and deceptive practices when buying goods and services on-line. Work is underway to help economies implement APEC's Voluntary Consumer Protection Guidelines for the On-line Environment, which were approved by Ministers in October 2002. These cover international cooperation, education and awareness, private sector leadership, on-line advertising and marketing, and the resolution of consumer disputes.

- *Data privacy*

Another challenge is for economies to address the issue of data privacy, which is protecting the personal information of consumers while also facilitating trans-border data flows. In order to foster the development of compatible approaches to data privacy in the region, in 2002 the ECSG undertook a mapping exercise of APEC economies and their approaches to data privacy. In February 2003, the ECSG established a Data Privacy Subgroup to develop a set of privacy principles and implementation mechanisms, to continue the exchange of information on developments related to data privacy within individual economies and to encourage public awareness by identifying and sharing best practices on data privacy protection.

- *Cyber Security*

The ECSG held a forum in August 2003 to address cyber security issues, another key concern for the consumer, at the individual firm level. The ECSG's 2002 Stocktake of E-commerce Activities is a business-friendly inventory of the electronic commerce activities currently being undertaken by APEC fora. The business/private sector has also been an active participant in all ECSG meetings. In addition, an APEC E-Commerce Business Alliance was established in 2001, and the Global Business Dialogue on Electronic Commerce was granted Guest Status in 2003.

Key outcomes of the *Toward a Cross-border Paperless Trading Environment Symposium* held in September 2003 were the need to reduce the number of data elements required by government authorities, for economies to establish a single window for the lodgment of import and export data, to encourage all economies to adopt international standardised data sets and e-message formats based on World Customs Organisation (WCO) and United Nations Center for Trade Facilitation and Electronic Business (UN/CEFACT) standards, to encourage the cross-recognition of Public Key Infrastructure (PKI) domains, and the adoption by APEC economies of electronic Bills of Lading and Electronic Carnets.

E-Commerce in ASEAN

In addition, the ASEAN Telecommunications Ministers (TELMIN) met on 27-28 August 2002 and signed the Manila Declaration resolving to exploit ASEAN's competitive edge in the Information and Communications Technology (ICT) sector. Terms of references and work programmes have been developed for the five Telecommunications Senior Officials Meeting (TELSOM) working groups on information infrastructure, undertaking capacity building, universal access and digital divide in ASEAN, intra-ASEAN trade and investment in the telecommunications and IT sectors, and positive use of the Internet. The e-ASEAN Initiative has been transferred from the purview of the ASEAN Economic Ministers to the ASEAN Telecommunications and IT Ministers (TELMIN), except for elements relating to trade and investment liberalization and e-commerce promotion.

(<http://www.aseansec.org/6269.htm>. Accessed on 13/2/04)

There is an e-ASEAN Working Group (EAWG), which continues to contribute to the implementation of the e-ASEAN Framework Agreement, covering the intra-ASEAN activities, cooperation with Dialogue Partners, and streamlining the current and future direction of EAWG functions. The EAWG has developed a funding mechanism to build sufficient financial resource with fast track approval process. The e-ASEAN operational mechanism has been restructured to reposition and enable the EAWG to respond to the need for convergence of information infrastructure and IT applications.

In addition, a Common Reference Framework for e-Commerce Legal Infrastructure has been published to assist the countries without, or with inadequate, e-commerce legislations. An e-commerce white paper to share available information on each country's initiatives and development is under preparation. A Cyberlaws seminar was held in order to share best practices and learn from the experiences of the more developed countries in ASEAN. The e-ASEAN Public Key Infrastructure Forum has also been established. The study on cross-border harmonization of e-transactions and e-signatures legal frameworks are underway.

E-Commerce incubator activities have been implemented to create a business environment that supports e-commerce development in the region and to support ASEAN small and medium enterprises (SME) in international trade. To speed up the development and acceptance of e-commerce in certain countries, appropriate business models are being developed through ASEAN e-commerce programme. Experts from more developed countries in ASEAN are sharing the best practices for consideration and adoption where applicable.

E-ASEAN aims to develop a broad-based and comprehensive action plan including physical, legal, logistical, social and economic infrastructure needed to promote an ASEAN e-space, as part of an ASEAN positioning and branding strategy. E-ASEAN would cover the economy, society and government. These are all very ambitious plans for the region and the issue of consumer protection in all these developments cannot be overlooked.

While focusing on encouraging and facilitating the growth of e-commerce, e-ASEAN would include prescriptive measures to narrow the digital divide within the region. In an effort to localize Internet traffic within the region and to encourage the growth of indigenous content and services, the Task Force is also working on establishing an ASEAN Information Infrastructure (AII) and has initiated consultative dialogues with the private sector to explore short- and long-term plans for the AII.

The Task Force has formulated plans to accelerate the development of e-commerce across the region and identified key factors, such as cyber laws, secure messaging infrastructure, payment gateways, and on-line services and products for regional development.

In addition, an e-ASEAN FRAMEWORK AGREEMENT was drawn up.

Facilitation of the Growth of Electronic Commerce (with particular reference to ARTICLE 5)

This Framework states that Member States shall adopt electronic commerce regulatory and legislative frameworks that create trust and confidence for consumers and facilitate the transformation of businesses towards the development of e-ASEAN. To this end, Member States shall:

- (a) expeditiously put in place national laws and policies relating to electronic commerce transactions based on international norms;
- (b) facilitate the establishment of mutual recognition of digital signature frameworks;
- (c) facilitate secure regional electronic transactions, payments and settlements, through mechanisms such as electronic payment gateways;
- (d) adopt measures to protect intellectual property rights arising from e-commerce. Member States should consider adoption of the World Intellectual Property Organisation (WIPO)

treaties, namely: “WIPO Copyright Treaty 1996” and “WIPO Performances and Phonograms Treaty 1996”;

- (e) take measures to promote personal data protection and consumer privacy; and
- (f) encourage the use of alternative dispute resolution (ADR) mechanisms for online transactions.

The measures that the ASEAN and APEC agreements have suggested would provide some protection for the consumer in e-commerce transactions. Implementation of these measures and the monitoring of them will be a challenge. Consumers must be knowledgeable about the relevant issues to assist in the enforcement of them.

Malaysia’s comparative performance

A quick comparison with a few other countries in ASEAN, as shown in Table 1 below, indicates that Malaysia has a generally more advanced economy and Information Technology industry in the region, second only to Singapore. The table shows that ownership rate for mobile phones per 100 people was 31 and computers per 100 people was 13.

Table 1: Comparison of selected indicators of Malaysia with selected ASEAN countries

How Malaysia stacks up					
Selected indicators, 2001	Malaysia	Indonesia	Philippines	Singapore	Thailand
GDP per person, \$	3640	680	1050	24740	1970
Life expectancy, years	71.7	65.9	67.7	78.8	68.9
Health-care spending, % of GDP*	2.5	2.7	3.4	3.5	3.7
Computers per 100 people	13	1	2	51	3
Mobile phones per 100 people	31	3	15	72	12
Electricity (kWh) used per person+	2474	345	454	6641	1352
Cars per 1000 people*	147	12	10	122	27

Sources: World Bank, World Health Organisation, International Telecommunications Union, International Road Federation. * 2000 + 1999

In addition, the Global e-Commerce Report 2002 by TNS Interactive (June 2002) placed the use of the Internet for Malaysia, Thailand, and Singapore as shown in Table 2. Internet is used more at home in all three countries as compared to anywhere else.

Table 2: Use of Internet in selected ASEAN countries (%)

Location of Internet use	Malaysia	Thailand	Singapore
Home	16	10	43
Work	4	3	22
School/University	2	4	7
Others	2	6	4*

* includes 1% use on mobile phones.

Source: TNS Interactive Global e-Commerce Report June 2002.

An Overview of E-commerce Guidelines in Malaysia

Malaysia has seen rapid growth and expansion of information technology and communication in the country in the last decade or so. Several factors have contributed to this, including a growing economy and an increase in educational and training opportunities in this field, besides global

influence. Government strategy too has contributed tremendously to this process. The former Malaysian Prime Minister, Tun Datuk Seri Dr Mahathir Mohamad, was the primary mover and planner for the development of ICT and a knowledge society in the country. When he drew up the Vision 2020 plan to lead Malaysia into achieving first world status, it included an ICT vision (Kaur, 2003a). The current Prime Minister, Datuk Seri Abdullah Ahmad Badawi, seems to want to continue with these efforts to promote ICT development as a primary engine for Malaysia's advancement in the global economy.

The ICT Vision

The sixth challenge in the nine strategic challenges set out towards realizing Vision 2020 is "the establishment of a scientific and progressive society, a society that is innovative and forward-looking, one that is not only a consumer of technology but also a contributor to the scientific and technological civilization of the future" (Mahathir, 1999, p. 42).

In the context of information and communication technology or ICT, this Vision is intended to harness the full potential of ICT to achieve a knowledge society in an advanced industrial society. The plan was for Malaysia to leapfrog the conventional development stages to achieve their goal. There is to be extensive use and application of ICT in the process of developing this knowledge society that will emphasise change and value creation (NITC, 2000, p. 122).

The plan thus was to develop a world class multimedia and content industry, and ICT is seen to be the enabler and facilitator of the Information Age. Mahathir believed the advancement of the Malaysian and the economic agenda was through developing and using ICT. The National Information Technology Council (NITC) was set up to develop the people, infostructure (hard and soft infrastructure), and applications (NITC, 2000).

The Multimedia Super Corridor Creation

The then Malaysian prime minister, Dr Mahathir, launched the Multimedia Super Corridor (MSC) as a way for Malaysia to shift from the Industrial Age to a borderless Information Age, a globalised economy where borders were no longer a protection from "predatory economies" (Mahathir's Speech, 1997). 1994 saw the inception of the Multimedia Super Corridor project. MSC, the Silicon Valley of Malaysia, and the tool to create and promote the knowledge based economy and society desired for the nation.

The MSC is 15 km wide and 50 km long, stretching from Kuala Lumpur City Centre (KLCC) to the Kuala Lumpur International Airport (KLIA) in Sepang, Selangor. Among others, the MSC houses Cyberjaya (a cyber city), Putrajaya - the country's new administrative capital, the Malaysian Multimedia University, and a Research and Development Centre. Global infrastructure was provided to expedite matters to bring about the possibility of the MSC and its benefits. The MSC occupies a central place in the overall national plan.

Internet in Malaysia²

As pointed out by Sankaran (2000) and others, this technological transition has not occurred in isolation, but in tandem with the economic, political and socio-cultural transitions that the region has witnessed, albeit at different levels and intensities. The development of new information and communication technologies has facilitated freer flow of information, which has made it necessary for many ASEAN governments to review existing laws and regulations relating to the mass media.

² Kaur, K. (2003b). Consumers, Civic Groups, and the Internet In Malaysia: A Focus on the Communications and Multimedia Consumer Forum of Malaysia.

Internet growth is linked to telephone and computer ownership, and its accessibility. A biannual Consumer Satisfaction Index (CSI) survey carried out by the Malaysian Communications and Multimedia Commission indicates the following.³ Fixed line telephone ownership in households was 60% in late 2002 down from 69% in early 2001. Primary reasons for this decline were non-availability of line in rural areas (according to 41% respondents) and preference for mobile phones in urban areas (33%). Households with mobile phones have increased from 41% (June 2001) to 53% (December 2002). Mobile ownership among adults has also increased from 26% (June 2001) to 35% (December 2002). Mobile phone usage is increasing in popularity whether on the road (34%) in the home (33%) or in the office (21%).

The CSI survey also showed growth in PC ownership in households. In June 2001, there was 18% PC ownership compared to 26% in December 2002. However, the December 2002 CSI survey indicated a slight drop in Internet connection from 55% in Wave III or early 2002 to 48% in Wave IV or December 2002. Internet connection was not seen to be important to more people in Wave IV.

One household, one PC is a popular exercise promoted by the Malaysian government. The government has collaborated with financial institutions to make available financial aid to enable families to purchase a computer. Individuals have also been encouraged to use a certain portion of their employee provident fund to make such a purchase.

In 1990, the first Internet Service Provider, or ISP, known as the Malaysian Institute of Microelectronic Systems (MIMOS) launched the network known as Joint Advanced Integrated Networking (JARING). This network was gradually expanded through regional and international connections, and the number of subscribers grew from 30 in 1992 to 23,000 in 1995. Telekom Malaysia was given the licence to operate the second ISP, known as TMNet, in November 1996. The ensuing competition resulted in declining charges for Internet usage and a steady increase in the number of subscribers, from 50,176 in 1996 to about 300,000 at the end of 1999 (Sankaran, 2001).

The CSI survey (December 2002) showed that Internet subscription to TMNet was 86% while subscription to Jaring was 13%. At least, 50 per cent of Internet usage is in the Klang Valley region and centres around the Multimedia Super Corridor, which is the ICT hub of Malaysia.

Internet connectivity in the commercial sector, among the sample companies in the CSI survey (December 2002), was 63%. E-mail communications (98%) and information search (97%) are the main reasons for Internet usage among commercial consumers. In addition, e-commerce usage had almost doubled from 15% in early 2002 to 26% in December 2002.

The popularity of the Internet has soared over the last few years. Hot spots have been set up in several locations in the big cities, including at cafes, such as Starbucks, and WiFi services are seeing a growth in popularity.

Regulatory framework

Convergence of media, computers, and telecommunications was a concept very few had any idea of, including the prime minister and other policy makers. However, counsel was sought from experts what this would and could mean to the country. Efforts have been made to create awareness and promote an understanding of ICT, a borderless world and its implications among policy makers and support agencies to prepare Malaysians to embrace this new global development.

To demonstrate commitment to the concept, a new federal ministry, Ministry of Energy, Communications and Multimedia, one of the first of its kind in the region, was established to reflect

³ Consumer Satisfaction Index (CSI) Survey Wave IV: A Summary Report, September- October 2002, by Malaysian Communications and Multimedia Commission, Released in December 2002.

this phenomenon of convergence. A primary role for this Ministry is to facilitate convergence and ICT growth, and it has the cooperation of several agencies including the Malaysian Communications and Multimedia Commission (or MCMC), MIMOS, and Multimedia Development Corporation (MDC) to do so.

Malaysia was also one of the first countries to introduce a specific set of laws covering the Internet. Known as Cyber Laws, and enacted in 1997, they include the Computer Crimes Act 1997, the Digital Signature Act 1997, and the Telemedicine Act 1997. The Malaysian Communications and Multimedia Act 1998 or CMA was also enacted, which saw the set up of a regulatory arm for the Ministry of Energy, Communications and Multimedia namely, the Communications and Multimedia Commission in 1998. This Commission regulates communications and multimedia activities including telecommunications, broadcasting, and more recently, postal services.

The CMA provides for a regulatory framework to harness the potential of convergence and to drive the growth of the communications and multimedia industry (MCMC, 2003). It was to replace all previous regulations pertaining to this area, including the Broadcasting Act 1988 and the Telecommunications Act of 1950, which were repealed in 1999.

The government was pragmatic to recognize the need for self regulation of this industry that is facing a rapidly changing and convergent environment. It appears to understand the dire need for the government to work closely with the industry to keep on top of convergence and other industry development issues. Thus, this Ministry, through its regulatory agency – the Communications and Multimedia Commission, promotes and facilitates self-regulation, and tries to ensure the civil society plays a role in relevant issues, particularly on consumer and content matters.

However, the government has studiously avoided imposing censorship on the Internet. The government feels that such a move could damage its efforts to attract cutting-edge technology and investment as proposed in its ICT Vision and the MSC project. Then Deputy Home Minister Datuk Chor Chee Heung, categorically stated that “it is the government’s policy not to censor publications and materials on the Internet and this policy remains steadfastly in place” (cited in Sankaran, 2000).

In addition, the Communications and Multimedia Consumer Forum of Malaysia (CfM) was established in February 2001 in accordance with the requirements of the Communications and Multimedia Act (CMA), 1998, Section 190. It is registered with the Registrar of Societies of Malaysia and it is an independent body comprising institutional members from the industry and civic groups as well as individual members.

The Consumer Forum is entrusted to draw up codes for improved customer and consumer service in the communications and multimedia industry. Its first code “The General Consumer Code of Practice for Communications and Multimedia” (GCC) was registered in September 2003, and the Internet Access Service Providers Consumer Code of Practice is in its draft stage. These codes are an attempt at self regulation and were drawn up based on input from both the industry and the consumer groups. Draft copies were also promoted at road shows around the country in the major cities and towns to gain feedback from the public. However, feedback from the public was minimal. Perhaps, the public needs to be educated first on the issues and relevant concerns to encourage greater and more valuable participation from them in the self-regulation process. There were suggestions that they could not understand implications of the Codes on them as often these can be indirect. However, no specific code related to e-commerce has been drawn up and the Forum’s role in this aspect is undetermined and yet to be tested.

E-Commerce in Malaysia

E-Commerce is fast expanding in Asia with total revenue in the Asia Pacific estimated at USD39.4 billion in 2000. This figure is expected to increase to more than USD338 billion in 2004. According to a study conducted by Taylor Nelson Sofres (an international research agency), more

people in the Asia Pacific region are shopping online and six out of nine countries surveyed showed a rise in e-commerce. In May 2002 an average of 35% of people in the Asia Pacific countries surveyed used the Internet. This is four percent more than the worldwide user average of 31%. All these suggest a positive outlook for Asia Pacific e-commerce retailers.

Table 3 below allows for a quick glance at some statistics about Malaysia and suggests the country's preparedness for e-commerce transactions.

Table 3: Some Statistics on ICT/ E-Commerce for Malaysia.

GENERAL ECONOMY INDICATORS	
Population (2nd Quarter 2004)	25.58 Million
Area (sq. km)	329,758 sq. km.
Per Capita Gross National Income (2003)	RM14,838
GDP Growth* (2003)	4.5 per cent
<u>External Trade 2003 (RM billion)</u>	
Exports 2003	RM398.9 billion
Imports 2003	RM317.8 billion
ICT in Trade	RM1.2 billion
ICT & E-COMMERCE FACTS	
<u>Penetration of ICT</u>	
TV/100	80
Telephone/100 (Q1 2003)	18.7*
PCs/100	14
Mobile Cell Phone Subscribers (June 2004)	12.4 million
<u>Malaysian ICT Market</u>	
2007 (forecast)	RM40 billion
2004	RM34.5 billion
2003	RM32.0 billion
Growth	8.3 percent
MSC-Status Companies (August 2004)	1,090 companies
Internet subscribers (to ISPs), 2003	3.0 million
Broadband subscribers (June 2004)	170,000
Malaysia's Internet population 2003 (million)	8.6 million
Percentage of Internet users from total population	37.1 percent
Annual growth 2002-2003	60.5 percent
Percentage from Internet population who buys online	28.4 percent
Internet population growth, 2002-2007	19.9 percent
<u>Global Internet Population (2002)</u>	
2005 Forecast	941 million
<u>Global E-Commerce Market (2005 Forecast)</u>	
Business-To-Business (B2B)	RM16.4 trillion (IDC)
Business-To-Consumers (B2C)	RM1.1 trillion (IDC)
<u>Malaysian E-Commerce Market (2005 Forecast)</u>	
Business-To-Business (B2B)	RM29.6 billion (IDC)
Business-To-Consumers (B2C)	RM5.7 billion (IDC)

NOTE: Information obtained and compiled from various sources such as Department of Statistics, Malaysia, Multimedia Development Corporation (MDC), International Trade Centre (ITC), Association of Computer and Multimedia Industry of Malaysia (PIKOM), International Data Corporation (IDC)

* Projection by the Ministry of Finance

Source: www.matrade.gov.my/e-commerce/fact_figure.htm (Accessed on 5/10/05)

While the overall outlook for e-commerce business looks encouraging in the Asian Region, there are several challenges for Malaysia. Internet penetration had not achieved a significant growth in 2003, with only 37% of Malaysians having used the Internet (Table 3), compared to 24% in the year 2001 and 25% in the year 2000. However according to the Taylor Nelson Sofres survey, only 3% of Malaysian Internet users shopped online in 2002, compared to 4% in 2001. Thirty-eight percent of Malaysians felt that it is safer buying goods or services in a store and 36% of them do not want to disclose their credit card details. Security-related issues were cited as the main reason for not shopping online. The Malaysian consumer's lack of confidence and trust in e-commerce transactions is further accentuated by the fact that the Consumer Protection Act specifically excludes protection in electronic transactions.

With the rapid expansion of E-Commerce and the lack of regulatory mechanism to govern online transactions, there is a need to study what problems exist and what remedies can be introduced to address these problems effectively. Consumers who participate in electronic commerce should be afforded the same legal protection as traditional consumers. In Malaysia, existing legislations that govern Internet-related activities, including the Digital Signature Act 1997 and the Communications and Multimedia Act 1998, were enacted specifically to deal with issues and problems related to such activities, but more to lend to the growth of the e-industry.

In addition, related regulations may also be applied to govern e-commerce even though they were not enacted specifically for Internet users. The Contracts Act 1950, for example, regulates the formation of contract. The Sale of Goods Act 1957 deals with rights of seller and buyer and provides protection for both. These laws are also relevant to on-line buyers and sellers, in that these laws may be adapted to suit on-line transactions. The Penal Code also continues to apply.

Generally, the existing laws and practices that apply to existing forms of commerce in Malaysia are being stretched to cover Internet activities, including e-commerce transactions. This is not adequate and becomes even more problematic when enforceability of the laws by the respective ministries under which the laws were enacted sometimes remains unclear.

Challenges

For the full potential of e-commerce to be realized, a number of challenges remain to be overcome. Two of the primary challenges that have been listed in almost all literature on e-commerce include security and privacy. These are of primary concern to all parties, including consumers in Malaysia.

According to Fleming (Web Navigation; O'Reilly 1998, cited in Finnis, 2003), "for most shoppers, feeling secure about entering financial information is the most important consideration in shopping online." She justifies her assertion by making reference to the 8th Gvu User Survey in which "shoppers overwhelmingly listed security as a concern. (http://www.cc.gatech.edu/gvu/user_surveys/survey-1997-10/)

Consumers who would happily mail their credit card number, read it down a telephone line or even hand it across a bar, hesitate before typing it into a browser screen. Although confidence is beginning to grow, fears are reignited by news reports of hacking such as the attacks on net giants like Yahoo (Electronic Telegraph; 10 February 2000; *Hackers cripple web sites with 'junk' messages*; <http://www.telegraph.co.uk>, as cited in Finnis, 2003) and Microsoft (Electronic Telegraph; 28 October 2000, as cited in Finnis, 2003).

E-commerce currently offers secure server and encryption technology as a solution to the security risks associated with transmitting data through Cyberspace. Encryption involves encoding information into a form that only the intended recipient can interpret. The commonly used public key encryption involves two keys for each user; a public one, made freely available, and a private one known only to the user. Sensitive information (for example, a credit card number) is encoded using the

intended recipient's public key before transmission, even if intercepted by a hacker it is thus useless without the corresponding private key (Whittle; *Cyberspace: the human dimension*; Freeman 1997, as cited in Finnis, 2003).

While it is certain that security technologies will continue to improve, it is at least, if not more, important to reassure consumers that the online transactions in which they are engaging are secure. An informative and easy-to-read explanation of a site's security features forms an important part of its promotional strategy. More importantly, regulatory measures – both legal and otherwise - need to be in place to authenticate all online traders and ensure consumer protection in e-commerce.

Closely related to the issue of security is that of privacy. Quoting the 8th GVU User Survey (http://www.cc.gatech.edu/gvu/user_surveys/survey-1997-10/), Fleming (*Web Navigation*; O'Reilly 1998, as cited in Finnis, 2003) states "Privacy is second only to security in most shoppers' minds." The process of requesting and storing personal information is one where the interests of site providers or vendors and visitors or customers are seemingly at odds. Web users are naturally concerned about the potential invasion of privacy associated with providing information online.

Regulatory Framework for e-commerce in Malaysia

As pointed out earlier, several cyberlaws were enacted by MCMC, the Malaysian regulatory agency for the communications and multimedia industry.

The Malaysian Government has committed itself to providing a comprehensive regulatory framework of cyberlaws and intellectual property laws to facilitate and assist the development of IT and e-commerce. In fulfilling this commitment, the Government has enacted laws such as the Digital Signature Act 1997, which provides an avenue for secure online transactions through the use of digital signatures; the Computer Crimes Act 1997; the Communications and Multimedia Act 1998; and has drafted the Personal Data Protection Act.

○ *Digital Signature Act 1997*

This Bill was registered on October 1st, 1998.

Scope: Digital Signatures. Generally applicable to all communications.

This Act establishes the legal validity, enforceability and admissibility of digital signatures. It recognizes repositories and authorizes the Minister to appoint the Controller of Certification Authorities. Additionally, the Act addresses the functions of certification authorities, the general requirements for a licensed certification authority, and the application procedures to become a licensed certification authority. This Act also subjects the licensed certification authorities to annual performance audits. Finally, the Act delineates requirements for the issuance, suspension and revocation of a certificate (<http://www.bmck.com/ecommerce/malaysia-t.htm> Accessed on 14/2/04).

○ *Computer Crimes Act 1997*

The Computer Crimes Act 1997 ("CCA") primarily makes unauthorised access to computers, programmes, data and other IT information an offence. The offences are categorised in the CCA as:

- (i) Unauthorised access to computer material;
 - (ii) Unauthorised access with intent to commit or facilitate further offence;
 - (iii) Unauthorised modification of the contents of any computer; and
 - (iv) Wrongful communication of the means of access.
- (<http://www.bmck.com/ecommerce/malaysia-t.htm> Accessed on 14/2/04).

○ *Personal Data Protection Bill (PDP) (yet to be enacted)*

Status: The Act is in the final stages of drafting and will likely be introduced into Parliament soon. It has been submitted to the Attorney-General's Chambers.

Scope: The PDP Act aims to increase confidence in online transactions, and protect the privacy of personal data residing in computer systems and those transmitted over networks and the Internet (The

Star, 3/2/2004). This Act will introduce penalties including fines and imprisonment for those who abuse cyber-information. (<http://www.bmck.com/ecommerce/malaysia-t.htm> Accessed on 14/2/04).

○ *Other Security, Legislation, and Regulation*

The Energy, Communications and Multimedia Ministry also announced on February 3, 2004, that the bills for the Electronic Government Activities Act (EGA) and the Electronic Transactions Act (ETA) were in the final stages of completion and approval (*The Star*, 3/2/2004). The EGA will provide the legal framework for efficient and secure electronic government services by facilitating and enabling online government transactions with the public and between government agencies.

The ETA, finalized by the Domestic Trade and Consumer Affairs Ministry, was now with the Attorney-General's Chambers. It is primarily targeted at boosting e-commerce by providing legal recognition of electronic transactions, including e-commerce transactions (Ibid).

In general, the different laws, policies, and regulations related to regulating e-commerce and providing some protection to consumers in Malaysia have been identified to be as listed below. However, these laws, policies, and regulations still have several inadequacies that need to be addressed. Several of the newer regulations were drawn up to promote ICT and e-commerce and had little or no consideration for protection of the consumer. They therefore need to be examined further for their capabilities to ensure consumer protection in e-commerce transactions.

List of Regulations and Issues

(<http://www.bmck.com/ecommerce/malaysia-t.htm>, Accessed on 14/2/04)

CONTRACTUAL ISSUES ON THE INTERNET

Formation of contract

Offer

Acceptance

Which law governs the contract?

Incorporation of contractual terms

Agency

CONSUMER PROTECTION

Consumer Claims Tribunal

INTERNET CONTENT REGULATION

Overview

Approaches to content regulation

Communications and Multimedia Act

Multimedia Super Corridor

Existing governing laws

Films (Censorship) Act 1976

Printing Presses and Publications Act 1984

Penal Code

Sedition Act 1948

Internal Security Act 1960

Scope of these laws

Effectiveness of these laws

Conclusion

EVIDENTIARY ISSUES ARISING OUT OF ELECTRONIC DATA

THE DIGITAL SIGNATURE ACT

The problem with identification

The technology involved – a necessary background

The workings of the DSA

The effect of a digital signature

Subscriber's duties and liabilities

Agent's liabilities

- Certification Authority's duties and liabilities
- Limitation of liabilities
- Cause of action
- The more significant criminal liabilities
- Power to search and seize material
- Conclusion

PRIVACY LAWS

- Privacy laws generally
- Personal Data Protection Bill
- Outline of the Bill
- Other laws relating to privacy
- Confidential information and trade secrets
- Contracts, trade secrets and restraint of trade
- Non-contractual cases

THE COMPUTER CRIMES ACT

- The offences
- Unauthorised access to computer material
- Unauthorised access with intent to commit or facilitate commission of further offence
- Unauthorised modifications
- Wrongful communication
- Abetment and attempts
- Presumption
- Wide powers of search, seizure and arrest
- Territorial scope

COPYRIGHT

- Copyright (Amendment) Act

MULTIMEDIA SUPER CORRIDOR

- Overview
- Bill of Guarantees
- A one-stop government agency – Multimedia Development Corporation
- Legal environment

Conclusions

International initiatives seeking to build international consensus on core protection for the electronic consumers, like those by Europe, the United States, and APEC offer a response to how electronic commerce may be monitored in order to provide appropriate protection and legal certainty to individuals and businesses globally. However, there is still a gap in the agreements to resolve how countries can specifically address dispute resolutions and the other concerns of both the local and the international e-consumer.

The future of e-commerce seems to be very bright. However, it can only remain so if there is consumer trust and confidence in it. Therefore, there is a need for online traders to be accountable and responsible to the consumer. Governments and businesses need to work together on an international platform to ensure specific standards are set, which will assist the electronic traders to meet their responsibilities more systematically.

Both the business and government have a role to play in international consumer protection in the online marketplace, which can be global and borderless. The government needs to provide a baseline for international consumer protection to ensure effectiveness of industry self-regulation and thus strengthen consumer confidence. Industry's expertise and knowledge of commerce, and its ability to take that information and translate it into procedures for operating in the digital world at the same pace as the underlying technology evolves will allow it to implement the necessary codes of conduct.

Malaysia has made, and is making, attempts to introduce various laws and guidelines specifically related to cyber issues, online and e-commerce transactions. It is also a participant in APEC's attempts to draw up agreements to set up baselines for e-commerce transactions internationally. However, there are still several issues to be resolved. Most of these guidelines focus on how to enable, facilitate, and promote e-business and e-commerce to lend to the much needed economic growth of the country. Little consideration is given to ensure steps are taken to protect the general consumer in their e-commerce purchases. Also, there seems to be a lack of input from consumer groups into ensuring that consumer interests are made a priority in all these agreements.

Therefore, it is important that there is an inclusion of a stronger consumer voice in the formation of these regulations, particularly since the average Malaysian consumer tends to be passive and reliant on the government to identify and resolve all their concerns. Additionally, the government itself needs to reexamine existing regulations to ensure protection for the e-commerce consumer. It urgently needs to amend the Consumer Protection Act so that it encompasses protection for the e-commerce consumer. The issue of such an amendment should not remain in lengthy debate since the weakness of the Act in specifically excluding coverage of the e-commerce consumer was recognised from almost the beginning of its enactment.

Finally, more regular and intensive research needs to be done to identify the weaknesses that exist in individual nations in consumer protection issues in electronic commerce transactions so that they can be rectified concurrently as the digital industry advances rapidly.

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Speech Text

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