



UNIVERSITI PUTRA MALAYSIA

**FREEDOM OF EXPRESSION IN CYBERSPACE:
A STUDY ON THE ACCEPTANCE OF APPLYING CYBER
LAWS IN THE MSC FLAGSHIP APPLICATIONS BY
LAW AND COMMUNICATION PROFESSIONALS**

ADAM MOHAMED AHMED ABDEL-HAMEED

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By

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**Thesis Submitted in Fulfilment of the Requirements for the
Degree of Doctor of Philosophy in the
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Universiti Putra Malaysia**

July 2000

To my parents, as they cherished me in childhood;
To Fatima, my wife who has been giving an overwhelming parenthood
warmth to our children and
To Sali and Ghassan, a joy of an eye.

Abstract of thesis presented to the Senate of Universiti Putra Malaysia in fulfilment of the requirements for the degree of Doctor of Philosophy.

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This study deals with the acceptance of applying cyber laws in the MSC flagship applications by law and communication professionals. It aims at assessing whether the provision of freedom of expression in the Multimedia Super Corridor (MSC) facilitates its flagship applications, determining the extent to which it should be exercised in light of the right to reputation, the right to privacy and the right to decency, comparing the views of the targeted professionals regarding the study issues as well as determining the relationships between selected demographic characteristics and freedom of expression for the facilitation of MSC, freedom of expression and the right to reputation, freedom of expression and the right to privacy and freedom of expression and the right to decency.

Data for the study was collected through a self-administered questionnaire developed by the researcher distributed to respondents consisted of law and communication professionals in the Klang Valley area of Malaysia. Two hundred and forty professionals answered the questionnaire. Data collection was conducted during August and September 1999.

It is revealed that freedom of expression is favoured for the facilitation of the flagship applications of the MSC, where the responses were very high in this respect. On the other hand, respondents showed concern about other rights. They showed concern about their right to reputation not to be defamed, their right to privacy not to be invaded and their right to decent materials not to be deprived from. Thus they favoured the balancing approach that should be made by the law. As such, the researcher recommended that there should be official efforts toward the awareness of law and communication professionals of the MSC and its applications and objectives. Also, he recommended that the current cyber laws should be amended so as the users will be secured of their reputation, the privacy of the information they provide in the implementation of a certain flagship application and the decency. In addition, he recommended that future formulation of the law should consult those with expertise.

Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk ijazah Doktor Falsafah.

**KEBEBASAN BERSUARA DALAM RUANG SIBER: SATU KAJIAN KE
ATAS PENERIMAAN TERHADAP PENGGUNAAN UNDANG-UNDANG
SIBER DI APLIKASI TUNJANG MSC OLEH PENGAMAL
PERUNDANGAN DAN KOMUNIKASI**

Oleh

ADAM MOHAMED AHMED ABDEL-HAMEED

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Kajian ini adalah berkaitan dengan penerimaan undang-undang siber di MSC oleh pengamal undang-undang dan komunikasi. Ia adalah untuk menilai sama ada peruntukan kebebasan bersuara dalam Koridor Raya Multi Media (MSC) memudahkan usaha aplikasi MSC, di samping mengenalpasti sejauh manakah ia perlu dipraktikkan dalam konteks menjaga nama baik, hak individu dan hak terhadap tatasusila. Kajian ini juga adalah untuk membandingkan pandangan pengamal-pengamal sasaran dan mengenalpasti perhubungan di antara ciri-ciri demografik terpilih responden dengan kebebasan bersuara dalam mengembangkan fungsi MSC; kebebasan bersuara dan hak reputasi yang sebenar;

kebebasan bersuara dan hak individu, serta kebebasan bersuara dan hak terhadap tatasusila.

Data kajian diperolehi melalui pengedaran soal selidik kepada responden yang terdiri daripada pengamal undang-undang dan komunikasi di sekitar Lembah Klang di Malaysia. Seramai dua ratus empat puluh orang responden dipilih untuk menjawab soal selidik yang dibentuk oleh pengkaji. Data telah diperolehi pada bulan Ogos dan September 1999. Kebebasan bersuara mendapat tindak balas yang tinggi dan didapati ia menjadi pilihan terhadap memudahkan usaha mencapai status MSC. Dalam pada itu, responden juga didapati sebagai prihatin terhadap kebebasan menjaga reputasi daripada dicemari, hak individu daripada dicabuli dan hak terhadap pemilikan harta benda. Mereka memilih pendekatan seimbang dalam perundangan. Pengkaji mencadangkan akan keperluan terhadap penyediaan kebebasan berucap dalam MSC selaras setiap aplikasi MSC. Pengkaji juga mencadangkan perlu ada satu usaha yang merangkumi kawalan terhadap kebebasan bersuara untuk menjaga reputasi, hak-hak individu atau tatasusila demi kesejahteraan matlamat MSC. Ini akan lebih menjamin penjagaan reputasi dan hak-hak individu daripada didedahkan kepada bahan-bahan pornografi yang tidak bermoral.

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LIST OF ABBREVIATIONS

ANOVA	Analysis of variance
ARPA	Advanced Research Projects Agency
ARPANET	Advanced Research Projects Agency Net
ATM	Automated Teller Machine
BITNET	Because It's Time Network
cl.	Clause
CP	Communication practitioners
CS	Communication scholars
df.	Degree of freedom
E-commerce	Electronic Commerce
ECPA	United States Electronic Communication Privacy Act
E-government	Electronic government
E-mail	Electronic Mail
FBI	United States' Federal Bureau of Investigations
FRC	United States Federal Radio Commission
IBM	International Business Machine
IC	Identity Card
IDC	International Data Corporation
IP	Internet Protocol
ISP	Internet Service Provider
IT	Information Technology
KLCC	Kuala Lumpur City Centre
KLIA	Kuala Lumpur international Airport
LP	Law practitioners
LS	Law scholars
MDC	Multimedia Development Corporation
MILNET	United States Military Net
MS	Mean of squares
MSC	Multimedia Super Corridor
NGO	Non-governmental organisation
NSF	United States National Science Foundation
NSFNET	United States National Science Foundation Net
NSW	New South Wealth
NUJ	National Union of Journalists
R	Reversed
R&D	Research & Development
RM	Ringgit Malaysia
SPSS	Statistical Package for Social Science
SS	Sum of squares

Std. dev.	Standard deviation
TCP	Transmission Control Protocol
TV	Television
UIA	International Islamic University of Malaysia
UiTM	Mara University of Technology
UK	United Kingdom
UKM	National University of Malaysia
UM	University of Malaya
UPM	University Putra Malaysia
US	United States
USSR	Union of Soviet Socialist Republics
V-mail	Voice Mail
WCT	World Intellectual Property Organisation Copyright Treaty
WIPO	World Intellectual Property Organisation
WWW	World Wide Web

CHAPTER I

INTRODUCTION

This chapter presents information on the study background, the problem statement, the objectives of the study and the justification for it. The concept of freedom of expression, the right to reputation, the right to privacy and the right to decency will be discussed in more details later. As a starting point, freedom of expression is the freedom to speech and to the press. The right to reputation is the right to safeguard one's name of being defamed. The right to privacy is one's right to be let alone. Lastly, the right to decency is the right not to be exposed to indecent materials including obscenity and pornography.

Background to the Study

This section presents the early experiences of the problem, the cyberspace era, the Malaysian experience and the Malaysian cyber laws.

Early Experiences

At the outset, it should be pointed out that the concern of freedom of expression is as old as the American Bill of Rights 1791. The First Amendment contained in the Bill of Rights provided the freedom of expression. It reads that "Congress shall make no law . . . abridging the freedom of speech or of the press".

By its imprecise wording, this statement raised many questions regarding its interpretation. These include do these words mean that the statement provides an absolute freedom to speech and to the press whatsoever, or should it be understood and interpreted in the light of other rights and/or freedoms stated by provisions included into the constitution itself?

In other words, to what extent should the freedom of speech and of the press provided by the constitution be exercised when other rights or freedoms are to be maintained at the same time. Thus, the understanding of this statement and the interpretation of its words posed practical problems especially when other rights or freedoms are being or seem to be in conflict with this freedom.

Likewise, in Malaysia, the Federal Constitution stated in paragraph (1) (a) of section 10 that “every citizen has the right to freedom of speech and expression” (The International Law Book Services, 1997). However, it didn't say that whether this provision guarantees an absolute freedom of expression or should it be understood and interpreted in the light of other civil rights necessary for the welfare of the citizens.

In practice, nowadays the issue of freedom of expression in Malaysia raises questions in several cases both in terms of reprisal by the government and the abuse by individuals. One of these is the case of the Canadian journalist, Murray Hiebert who was charged with the contempt of court and deprived of his passport as a condition of bail for writing an article in January 1997 about a legal dispute involving the son of a Court of Appeal judge (Addruse, 1999). In this case the government is blamed for the reprisal of freedom of expression.

In addition, the same can be said about the three years imprisonment sentence inflicted upon opposition parliamentarian Lim Guan Eng is one of the milestone cases raised in this respect. In this case, Lim had been sentenced for publicly criticising the government's handling of allegations of statutory rape against Rahim, former chief minister of

Malacca, in 1994 as well as printing a pamphlet allegedly containing libellous information about Rahim on the grounds that the Court of Appeal had interpreted the law in a manner that erodes freedom of expression in the country (Suaram, 1998; Lim, 1997d; Lim, 1997f).

Moreover, the dismissal of Chandra Muzaffar from University of Malaya is another case mentioned when the issue of reprisal of freedom of expression by the government is concerned. Muzaffar was said to be dismissed for exercising his freedom of expression for supporting former Deputy Prime Minister of Malaysia, Anwar Ibrahim and criticising the government's case against Anwar (Saunders, 1999).

Such cases and others were labelled within Malaysia and outside it as a violation of freedom of expression in the country. This subjected Malaysia to criticism and blaming of human rights organisations including Human Rights Watch, Amnesty International and Asian Human Rights Commission, to mention a few (Addruse, 1999; Amnesty International, 1998; Saunders, 1999; Suaram, 1998).

On the other hand, practical cases showed that freedom of expression could also be abused by the individuals. The Chow Kit incident

is worth mentioning in this respect. In this case four persons were tracked down and charged under section 505 (b) of the Penal Code in four magistrate's courts in Kuala Lumpur and Petaling Jaya for spreading rumours about alleged riots in the Ckow Kit area through e-mails (Abbas, Singh and Poosparajah, 1998; Emmanuel, 1998).

The same can also be emphasised and supported by the cases of the distribution of 11 pictures in a sexually explicit-position through e-mails by a tourism group KRU member and ELITE (Goh, 1999) and the banning of Malaysians users by US-based web-site DALnet for involvement in exchanging pornography (The Star, 1999).

Not only in Malaysia but also in its neighbouring countries the issue of freedom of expression reprisal and abuse can be found. For instance, in Singapore freedom of expression is on trial in the Singaporean Prime Minister Goh's case against opposition leader Joshua Jeyaretnam for calling him "anti-Christian and anti-Chauvinist" during a general election rally. Jeyaretnam's lawyer accused Goh for curtailing freedom of expression and adapt it only for his own purposes to stay in power and strife opposition (Winstanley-Torode, 2000).