

E-Commerce and Consumer Protection: The Importance of Legislative Measures

(E-Dagang dan Perlindungan Pengguna: Kepentingan Langkah Perundangan)

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ABSTRACT

Electronic commerce (e-commerce), the byproduct of growth in the field of information and communication technology (ICT) has revolutionized the manner in which commercial transactions are being carried out the world over. Even though e-commerce is a positive phenomenon, the same cannot be said for the legal protection it accords to consumers who resorts to e-commerce transactions. E-commerce sees the need to include consumer protection into the law because there is no genuine equality in the bargaining strength of the contracting parties. This article using the content analysis method analyses the significance of legislative measures in protecting consumers in e-commerce. The research findings exposed that the current cyber laws does not incorporate consumer protection. Future laws enacted must incorporate consumer protection especially in e-commerce.

Keywords: electronic commerce, consumer protection, legal protection, cyber laws

ABSTRAK

Elektronik dagang (e-dagang) yang terhasil daripada pertumbuhan dalam bidang teknologi maklumat dan komunikasi (ICT) telah merevolusikan cara dalam mana transaksi komersial dijalankan di seluruh dunia. Walaupun e-dagang merupakan fenomena yang positif tetapi ia tidak sedemikian dalam konteks perlindungan undang-undang yang diberikan kepada pengguna yang memilih transaksi e-dagang. E-dagang memperlihatkan keperluan untuk memasukkan perlindungan pengguna ke dalam undang-undang kerana ketiadaan kesamarataan yang tulen dalam kekuatan tawar-menawar antara pihak-pihak yang berkontrak dalam e-dagang. Artikel ini menggunakan metode analisis kandungan untuk menganalisis kepentingan undang-undang dalam memberi perlindungan pengguna. Dapatan kajian menunjukkan bahawa undang-undang siber sedia ada tidak memasukkan elemen perlindungan pengguna. Undang-undang yang digubal pada masa yang akan datang perlu mengutamakan dan mempertimbangkan perlindungan pengguna terutamanya dalam elektronik dagang.

Kata kunci : elektronik dagang, perlindungan pengguna, perlindungan undang-undang, undang-undang siber

INTRODUCTION

The Internet technology needs the law to regulate. As e-commerce which is an application of the Internet technology is accelerating in its growth and reaching out to the huge market, the law is needed to set the standards in commerce, regulate social order and impose punishment for anti social behaviour. Central to the need for a complete set of legal regime for the cyber space is the need for the law to protect consumers. Millions of consumers who ply through the net every seconds of the day are exposed to unscrupulous merchants, who know very well that they cannot be netted for their unscrupulous activities just because the law to accord protection to the consumers is not in place yet. Cyber consumer protection is needed to safeguard reasonable consumer expectation in cyberspace especially when consumers enter into e-commerce transactions because consumers are now participants in the global market.

Consumer protection should be made the central issue of the economic integration of a country.

In dealing with consumer protection, the rules must be essentially national and enforceable within the national framework because it has been submitted that, "consumers need the machinery of nation states in order to influence the behaviour of suppliers. They lack the power to do so on their own."¹ Consumers cannot be left on their own to protect themselves in the cyber arena. The efficacy of consumer protection lies with the law through the power of the state. However, the law must adapt its regulations to the varying conditions of the people, according to the degree of civilization and the needs of time. It has been opined that, "the idea that law must always be the same is not better than that medical treatment should be the same for all parties."² This article therefore discusses the importance of national legislative measures for consumers especially in e-commerce transactions via the Internet in Malaysia.

THE LAW AND THE INTERNET

In the current electronic era, although the utility of the law seems to have extended to the information and communication technology (hereinafter referred to as 'ICT') *vis-à-vis* the Internet it has left much to be desired. As Johnson and Posts contend:

The rise of an electronic medium that disregards geographical boundaries also throws the law into disarray by creating entirely new phenomena that require clear legal rules but that cannot be governed satisfactorily by any current territorially based entity.³

Johnson and Posts suggested 'net federalism'. They argued that:

Net federalism looks very different than what we have become accustomed to, because here individual network systems, rather than territorially based sovereigns, are essential governance units. The law of the net has emerged and we believe can continue to merge from the voluntary adherence of large numbers of network administrators to basic rules of law, with individual users voting with their electrons to join the particular systems they find most congenial.⁴

Digital libertarianism however has even gone to the extent of saying that no law can be enacted to cater for the cyberspace and lawlessness might be a permanent feature in the cyberspace. For instance Barlow on the issue of intellectual property rights in the cyber arena states, "the existence of cyberspace creates a legal disorder, which does not necessarily rest on the creation of rule of law but on an unbounded and perhaps permanently lawless state".⁵ Others have stated that, "the Internet which is in a state of chaotic, anarchic and amoral has no room for the law".⁶

Whilst the extremists seem to suggest that it is doomsday for the cyberspace, there are others who have demonstrated confidence that there can be a legal regime for the cyberspace. Digital realist such as Lessig claim that the cyber space can be regulated with four constraints that being market, norms, code/architecture and law.⁷ The market, norms and code/architecture are in part the product of the law.⁸ They are not independent of the law. Olejoke states in her book that, the law for ICT needs to be looked at as a separate discipline of law because it raises issues which:⁹

1. have a significant common denominator- legal issues raised by the use of computers;
2. are significant because they are novel in themselves, or require novel applications of existing concepts;
3. if systematically arranged in this context, would make ill-informed legal analyses less likely, and facilitate the identification of potential legal risks; and
4. if thus categorized would reflect realities encountered in practice.

The thoughts of these jurists can be broadly categorised into three groups: one group saying that it is impossible to enact law for the cyberspace; the others saying that new law can be created and the third group saying that existing law can be modified. Whatever their thoughts are, they have all agreed unanimously that currently there is no proper law to cater for activities in the cyberspace albeit the Internet. Furthermore as propounded by Llewellyn,

Law is a means to social ends and not as an end in itself so that any part needs constantly to be examined for its purpose, and for its effect, and to be judged in the light of both and of their relation to each other.¹⁰

Lawlessness in the cyberspace being the order of the day, the Malaysian government should race to create laws and arrest the disorderliness in the cyberspace. The political will however does not seem to prevail at least until now. It is rather surprising to see the lackadaisical attitude of the government. All nations in the world has seen the phenomenal growth of the Internet and multi million dollars worth of business transaction are being conducted through it on a daily basis. Yet, there is no comprehensive set of laws to restore law and order in the cyberspace. It will be wrong to claim that nothing has been done thus far. But all that have been done is to wait and see the development in other countries and then to follow suit namely to replicate the laws enacted in other countries without much thought to its utility in addressing problem arising in the Internet arena for example the Electronic Commerce Act 2006 which has been commented to have 'flaws' necessitating the Act to be reviewed.¹¹ The question is, is replication of the laws just to be at par with other countries sufficient?

THE IMPORTANCE OF LEGISLATIVE MEASURES

The lifeline for the lifeless cyberspace is living human beings. Their relentless pursuit of the Internet is the only reason for the phenomenal growth of the Internet. If not for the human beings there is no Internet and cyberspace. One does not need reminders that the actors in the cyberspace are human beings. They need legal protection for the many transaction conducted through the Internet. So long as, the human factor is involved, human traits would invariably follow suit namely the good and the bad. One does not need any protection from the good but what about from the bad? As submitted by legal commentators that, "the unique characteristic of the Internet have led to entirely new forms of unbounded harmful activities. It has generated new opportunities for the development of novel forms of misbehaviour."¹² Thus, "the law instead of operating to regulate responsible behaviour and impose consequences for irresponsible behaviour that

is, to set standards and impose sanctions consequent on their breach, it actually operates as a way of organizing irresponsible behaviour.”¹³

Even though the Internet has no physical existence and is a virtual space with no ownership, it would be a cyberspace fallacy to conclude that worldwide accessibility of the Internet means that no one legal jurisdiction has ‘de jure’ or ‘de facto’ control of these activities as put by Reed.¹⁴ He states the thought that cyberspace is inaccessible is a fallacy because,

All the actors involved in an Internet transaction have a real world existence, and are located in one or more legal jurisdictions. The computing and communications equipment through which the transaction takes place is also located in legal jurisdiction, even though it may be difficult to identify precisely which equipment was in fact used. It is inconceivable that a real world jurisdiction would deny that its laws potentially applied to the transaction.¹⁵

Therefore, the controlling body i.e. the state should be the controlling body and regulator of the Internet within its sovereignty. The networking of the Internet transcends nation states. Even though it is a networking system thus no one can claim ownership, nonetheless this networking system is workable because it is used by people who are domiciled around the world. The networking transcends the physical world though it is portrayed to be a networking system in the outer space which has no human control. Agreeing with Reed,¹⁶ it would be a fallacy indeed to declare that the Internet cannot be regulated. Furthermore, the Internet is only a medium of information technology, a modern high technology innovation.

Furthermore as put by Lessig, “that one is in real space while in cyberspace or, alternatively, that cyberspace is not a separate place.”¹⁷ Thus, he argues that behaviour in the cyber space can be regulated and that the government can take steps to increase its regulability. One nation state cannot control the networking which spans around the globe but it can and should control the networking which spans in and out of its state because the political sphere of sovereignty rests within ones jurisdiction. The Internet should not be perceived as a horizon where law cannot penetrate and its netizens (a term coined for citizens who use the net)¹⁸ can remove themselves from the scope of national laws. The Internet is only a conduit of transmission where its citizens should be within the control of sovereign states. The traditional government through statutory legislation should be the regulator of the Internet as oppose to the private sector that is self regulation because as argued by Lessig that “we have perhaps become too fixated on the notion that traditional government have no role to play in the Internet and that handing control to the private sector is the only way forward.”¹⁹ He states that the private

sector has no constitutional responsibilities and is not bound by checks and balances which are there to protect the society and he goes on to say that even if the traditional government may be flawed but the principles of governance such as equality, proportionality and transparency are observed.²⁰

Effectiveness of self regulation requires commitment from business. Attempting to develop codes across the marketplace would be very time consuming and voluntary codes can be difficult to endorse. This means that there may be no mechanism to ensure that their conduct is fair if the behaviour is not caught by the general fair trading laws around the country. It may also be difficult to market the concept that a particular business is better to deal with because its contract terms are fairer as consumers have not tended to focus on comparing the contract terms on offer. Internet contracting expels the effectiveness of self regulation. The basic problem of effectiveness and enforcement is the deterring factor. Therefore, the legislature of a state will be the ideal precursor of justice in controlling the perennial problems arising in e-commerce *via* the Internet in its state.

Standards are needed to prescribe the limits to permissible conduct which are to be applied according to the circumstances of each case which Pound terms as juristic postulates such as:²¹

1. no intentional aggression by others;
2. beneficial control over what they acquire under the existing social and economic order;
3. good faith in dealings;
4. due care not to injure; and
5. control over dangerous activities.

Some commentators however argue that consumer self-help is an avenue for consumer protection based on socio political ideological approach.²² Consumer self-help as an avenue for consumer protection is also emasculated in the National Consumer Policy in Malaysia (NCP).²³ The NCP promotes self protection. Federation of Malaysian Consumer Association (FOMCA) which mooted the NCP is promulgating the theme that ‘the best protection is self protection,’ through consumer education programs to increase the level of consumer literacy.²⁴ Legal commentators also suggest that individuals can make informed choices through information and education deterring them from falling prey to the anomalies of the Internet.²⁵ However, Goldring contends that:

Anti socialbehaviour lies in the effective application of legal rules by entities sufficiently capable of asserting sanctions to effect their efficacy. And that if netizens can remove themselves from the scope of national laws, nation states may defeat the political process and it is not sufficiently clear what sanctions they may impose to assure compliance with rules they may themselves promulgate.²⁶

Goldring submits that in dealing with consumer protection, the rules must be essentially national and enforceable within the national framework because he states that, “consumers need the machinery of nation states in order to influence the behaviour of suppliers. They lack the power to do so on their own.”²⁷

The Internet does not become a perfect market place just because buyers are better informed. The fact is consumers buying goods on line face greater risks as compared to traditional consumer. The consumers are the risk society in the cyber environment. Even though consumers buying online have a good source of information about the goods but they may still lack key information as commented by Cristina Coteanu, that, in the electronic environment the consumer is at a disadvantage as compared to a consumer buying goods off line both in form and content of the information gathered from the Internet because she states that:

In the electronic market place inspection of product will be much more difficult than in the traditional marketplace as consumers will not have the possibility to examine or test online products and services. In a stricter sense, disclosure of information refers to the placement and the proximity of disclosures, the use of hyperlinks, frames, pop-up screens and interstitials to make disclosures in banner ads. When disclosure of information is not presented clearly and conspicuously on the website, consumers risk not perceiving or understanding its meaning.²⁸

Furthermore, she states that the consumer buying goods *via* the Internet may lack information on the identity of the trader, bound by terms and conditions not clearly stated which may prove to be unfair to the consumers and disclosure of personal information without assurance of protection.²⁹ In other words therefore the consumer buying goods *via* the Internet is at greater risk as compared to the consumer buying goods from the brick mortar store. The risks that the consumer takes as compared to a consumer buying goods in brick and mortar shops are:

1. goods may not be of merchantable quality or correspond with the advertised goods. Furthermore the consumer has no means of actually inspecting the goods as oppose to a consumer who buys goods in a shop. A consumer buying goods in a brick and mortar shop gets to inspect the goods before buying it;
2. personal details of the consumer may be abused or tampered;
3. the identity of the seller may not be known;
4. the location of the virtual shop not known; and
5. bound by the laws of another country which may be to the disadvantage of the consumer.

Moreover, the global nature of e-commerce invigorates the need for consumer protection in the

Internet arena. Globalisation is often understood as “the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa.”³⁰ The Internet has made possible e-commerce trading to be global in nature. Thus, the legal framework needed for consumer protection should not be limited and tailor made to the specific environment for a specific jurisdiction but more suited to counter the consumer needs of the global networking. As inseeded by Cristina Coteanu namely that electronic market consumer protection rationales must be approached from the perspective of “technological specificity and failures” suitable to apprehend the innumerable doubts contracting *via* the Internet has created from a global outlook.³¹

Legislative measure is needed for consumer protection. As put by Bentham, acts that produce evil should be discouraged through law for, “the law aims to augment the total happiness of the society by discouraging those acts that would produce evil consequences.”³² In other words, Bentham’s jurisprudence of the law is not only to punish for the wrong done, but also to utilise the law to discourage the wrong done so that it is not repeated in the future for the benefit of the community as a whole.

Risk factors and lack of confidence in e-commerce contracting doubts the adequacy of the law in according protection to consumers in the cyber arena as put by Ian Ramsay, “ should consumers rely on the protection offered by the consumer law of the 1960’s or rather should they wait for a newly fashioned legal framework before contracting online?”³³ He doubts the suitability of the law due to the electronic market infrastructure.³⁴ Thus, it has been argued that, the legal taxonomy of the electronic market place leads to reconsideration of the way in which consumer protection rules are applicable in cyberspace.³⁵

Even though enactment of laws to cater for the new methods of conducting business *via* the Internet is of paramount importance now, the law must also be abreast with the society’s needs and wants especially with consumer protection as expressed by Katsh, “a new system of communication does more than make us more knowledgeable or our institutions more efficient. It also leads to the creation of new relationships and, most importantly, changes our attitude, expectations, and the ways of thinking about law.”³⁶ Thus, though the Internet is opined to have brought about new relationships, new attitudes and new expectations, the role of the law must be to regulate e-commerce rather than support it especially when the aim or objective of the law is to bring order and justice in the cyber arena especially when consumer protection is at the forefront.

The transformative impact of e-commerce *via* the Internet has changed commerce both in subject matter and in methodology of commercial contract

practice. A specific legislation with the underlying basis of consumer welfarism and cyber realism to promote efficient behaviour should be implemented in Malaysia to regulate e-commerce specifically in dealing with consumer transactions. Legislation has been the classic tool of regulation to make it clear to people how to behave rather than for them to work it out what to do each time. Legislative regulation is needed to adjust societal imbalances in the increased complexity and rapidity of change in modern societies. It delivers a level playing field because it applies to everyone within its scope. Furthermore, it does not give a choice for people to comply. Thus, regulation advocates compliance failing which consequences put forth by the law will come to force such as penalty or imprisonment namely sanctions. Sanctioning is where, “the objective of enforcement is to detect and prosecute violations of the law and to use the legal penalties to punish law breakers”.³⁷

Sanctions according to Bentham, is necessary for the compliance of the law because:

In public life the legislator understands that men feel bound to do certain acts only when such acts have some clear sanction connected with them, and this sanction consists of some form of pain if the mode of conduct prescribed by the legislator is violated by the citizen.³⁸

Moreover, legislative measure gives coherence for compliance at the international fore front which is needed for the trans border nature of e-commerce *via* the Internet. Through law the authoritarian power of command through the state can be legitimately exercised for the state has the democratic legitimisation, the procedural set up and the institutional enforcement to make regulations.³⁹ Self-regulation or co regulation though it has its advantages such as:

1. flexible means of promoting best practice;
2. minimal compliance with legal compliance;
3. can be designed for the specific requirements of an industry;
4. can impose lower compliance cost on business than government regulation, leading to lower prices for consumers;
5. provide a quick, low cost dispute resolution namely alternative dispute resolution; and
6. can be combined with other forms of regulation where it involves a tripartite approach between industry, consumers and government.

However, in the Internet environment the efficiency of self-regulation is doubted because it lacks the sanction power for compliance in trans border disputes as compared to the force of law backed up by sanction. Let it be self-regulation or co regulation, it must be backed up by statutory legislation. Self-regulation or co regulation should be complementary to the legislation according protection to consumers. As

Lessig puts it, “law is the most obvious self conscious agent of regulation. Law orders people to behave in certain ways; it threatens punishment if they do not obey. Thus, the law regulates behaviour.”⁴⁰

Statutory regulation therefore should be the tool to legislate consumer protection.⁴¹ Furthermore, the fact that e-commerce allows networking penetration from all corners of the world, statutory legislation of a sovereign state will provide the cogency to sustain adequate consumer protection to its society.

CONSUMER PROTECTION, E-COMMERCE AND THE CYBER LAWS IN MALAYSIA

Consumer protection should evolve with the innovation of ICT. The main act which governs consumer protection in Malaysia is the Consumer Protection Act 1999. The significance and prominence of having a statutory call for consumer protection became a reality in Malaysia in 1999 with the enactment of the Consumer Protection Act 1999. The Consumer Protection Act was enacted on the 15 November 1999 after ten years of discussion and five years of drafting.⁴² The Act comprises of 14 parts and 150 sections dealing with selected areas of the law. The Act gives inalienable rights to consumers in the form of guarantees of fitness and quality as to goods. The Act also protects consumers from misleading and deceptive conduct, false representation and unfair trade practices. All the rights alienated to the consumer in Consumer Protection Act 1999 cannot be contracted out as provided in section 6 of the Act. It comprises contractual, civil and criminal liability. Contractual liabilities are adherence to implied conditions as to safety and quality of goods and guarantees. The Consumer Protection Act 1999 is stated to be a supplementary Act, thus it must be read conjunctively to other Acts.

Initially, section 2(g) of the Consumer Protection Act 1999 provided that this Act does not apply to any trade transactions effected by electronic means, thereby excluding protection to consumers in e-commerce transactions. However, in August 2007 section 2(g) was lifted so as to provide protection to consumers in Malaysia buying goods or services through any electronic means which includes e-commerce via the Internet. Even though the Consumer Protection Act 1999 provides comprehensive protection in its own accord and terms, nonetheless the need for expanding the protection to other contractual areas for e-commerce is inevitable. The Consumer Protection Act 1999 does not provide for the protection of consumers on contractual matters such as formation of a contract or conflict of laws matters. These matters are left to the doctrine of freedom of contract. Furthermore the Contracts Act 1950 which governs formation of contract does not extend to consumer protection because it is a general act

which deals with the formation of contract. Therefore, a consumer seeking retribution in a breach of contract seeks redress in his status as any other member in a society and not in his capacity as a consumer. The consumer can only exercise his/her rights as a consumer limited to the scope as provided in the Consumer Protection Act 1999. The consumers' case is dealt with on an ad hoc basis. The remedy for seeking retribution is resolved with the awards of damages. Precedents are revived only when a consumer decides to sue. Thus, exploitation of consumers' vulnerability to unfair trade practices continues. These adverse factors are barriers to e-commerce. To overcome these barriers, specific set of rules should be enacted for e-commerce consumer contracts adhering to the technological specificity of e-commerce.

Adherence to technological specificity will provide cogency to the redress mechanism in a trans border dispute which will boost consumer confidence in e-commerce trading, inculcate fair trade practices, expand consumer protection and hold Malaysia in the same standing order as a nation which transgresses with global concerns. As stated earlier, it would be wrong to say that Malaysia has no laws in line with the development of the cyber arena. Cyber laws have been enacted in Malaysia. The cyber laws and the scope as summarised of these laws are as follows:

1. The Digital Signature Act 1997 (Act 562)

The Digital Signature Act of 1997 came into force on 1 October 1998. It provides a regulatory framework for the licensing of certification authorities and the legal recognition of digital signature. The Act also provides for the legal recognition and effect of digital signatures and documents signed with digital signatures. It stipulates that where the law requires a signature or provides consequences in the absence of a signature, such requirement shall be satisfied by a digital signature within the meaning of the Act and is legally binding as a document signed with a handwritten signature, an affixed thumbprint or any other mark.

2. Computer Crimes Act 1997 (Act 563)

The Computer Crimes Act 1997 provides for offences relating to the misuse of computers. The Act makes the following activities criminal offences:

- a. unauthorised access to computer materials;
- b. unauthorised access with intent to commit or facilitate commission of further offence;
- c. unauthorised modification of the contents of any computer;
- d. unauthorised modification of the contents of any computer;

- e. wrongful communication of any number, code, pass word or other means of access to any computer; and
- f. abetment of any of the above acts or who attempts any of the above acts.

3. The Telemedicine Act 1997 (Act 564)

The Telemedicine Act 1997 provides for the practice of medicine using audio, visual and data communications. It is to regulate and control the practice of telemedicine. The aim of this Act is to improve and allow access to health care and medical expertise.

4. Communications and Multimedia Act 1998 (Act 588)⁴³

It is a regulatory framework for the telecommunication, broadcasting and computer industries. Section 187 to 204 of this Act contains provisions on consumer protection. The provisions make it obligatory for facilities or service providers to deal reasonably with consumers and adequately address consumer complaints. Whereby, section 188 provides that, "Any network facilities provider, network service provider, applications service provider or content applications service provider shall:

- a. deal reasonably with consumers; and
- b. adequately address consumer complaints.

Section 190 states, the matters that consumers may complain about:

- a. the provision of information to customers regarding services, rates, and performances;
- b. the provisioning and fault repair of services;
- c. the advertising or representation of services;
- d. customer charging, billing, collection, and credit practices;
- e. any other matter of concern to consumers.

5. Electronic Commerce Act 2006 (Act 658)

The Electronic Commerce Act came into force on 30th August 2006. The Act merely gives legal recognition to contracts concluded over the Internet. The United Nations Commissions on International Trade Law (UNCITRAL) Model law was taken as a basis for the Electronic Commerce Act in Malaysia. The United Nations Commissions on International Trade Law was created by the United Nations General Assembly in 1966 which is the main legal body for the United Nations in the field of international trade law. To facilitate e-commerce, the Model Law was drafted by UNCITRAL, which established rules and norms

that validate and recognize contracts formed through electronic means.

The United Nations Commissions on International Trade Law (UNCITRAL) Model Law applies to any kind of information in the form of a data message used in the context of commercial activities, whether contractual or not.⁴⁴ The basis of the Model Law was to cater for outdated national law or due to the inadequacy of the national laws, which was implemented without electronic contracting in mind. The provisions of the model agreement, which deals with the formation of a contract, are as follows:

1. Validity and formation of the contract -article 11
2. Application of Legal Requirements to Data Messages -article 5
3. Admissibility in evidence of Data Messages- article 9
4. Processing and acknowledgement of receipt of Data messages - articles 13, 14, &15
5. Operational requirements for Data Messages -article 10
6. Effect, modification and severability - article 4

Based on this Model Law many countries have enacted laws on e-commerce transactions by modifying the legal provisions to suit the national laws, mostly by placing comprehensive legislative framework catering for electronic transactions, certifications authorities and digital signatures to create an environment conducive to the conduct of electronic commerce. Some of the countries which enacted laws on the formation of an e-commerce contract using the Model Law as guidance are as follows; for example, Australia passed the Electronic Transaction Bill in the year of 1999, Singapore passed the Electronic Transaction Act in the year of 1998, Ireland passed The Electronic Commerce Act in the year of 2000, United Kingdom passed Electronic Communication Act in the year of 2000, and India passed The Information Technology Regulations in the year of 2001. Malaysia too followed suit in implementing the Model law with the enactment of Electronic Commerce Act in 2006. The Electronic Commerce Act 2006 replicates the Model Law. As with the Model Law, the Electronic Commerce Act 2006 does not instill consumer protection in e-commerce transactions.

None of the other cyber laws, The Digital Signature Act 1997, Computer Crimes Act 1997 and the Telemedicine Act 1997 as stated above provide for consumer protection except for the Communications and Multimedia Act 1998. The Malaysian Communications and Multimedia Act 1998 establish procedures or guidelines for making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees i.e. network facilities

provider, network service provider, applications service provider or content applications service provider of Malaysia as stated above.

The progression of the ICT however has catalysed the need for consumer protection to other disparate areas. Malaysia should follow suit as with other countries such as the European Union or the United States in expanding the horizon for consumer protection. Follow suit does not mean duplicating the laws of the European Union Countries or the United States but moving in the same mindset of invigorating the laws to improve the quality of the life of the consumer society in Malaysia by giving prominence and significance to consumer protection. From the point of time a consumer navigates the web, the law should be in hand to protect the consumers especially in the cyber arena i.e. e-commerce.

CONCLUSION

Legislative interference as compared to judicial interventionism or self-regulation will accord a more profound effect for an international forum because e-commerce is of trans border in nature. Nonetheless, the law must meet with the need of the time to protect and serve the interest of the society namely the welfare and well being of consumers in the vicissitude of electronic commerce in Malaysia. Consumer protection provided within the axis of the Consumer Protection Act 1999 should be a stepping stone to extend and expand consumer protection to serve the socio economic paradox in the mentalist of commercial commonsense namely e-commerce so as to attain a high level of consumer protection in Malaysia.

NOTE

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² H. Chand, *Modern Jurisprudence*, International Law Book, Kuala Lumpur, 1994, p 195.

³ D. Johnson and D. Post, 'Law and borders, the rise of laws in cyberspace' (1996) 48 *Stanford Law Review*, p1367- 402.

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⁵ J.P. Barlow, 'Selling wine without bottles': 'the economy of mind on the global net', [www.eff.org/pub/intellectual property/idea/economy.article](http://www.eff.org/pub/intellectual_property/idea/economy.article).

⁶ D. Johnston, S. Handa & C. Morgan, *Cyber Law*, Pelanduk Publications, Malaysia, 1998, p 8.

⁷ L. Lessig, *Code and Other Laws of Cyberspace*, Basic Books, New York, 1999, p 6.

⁸ L. Lessig, *Code and Other Laws of Cyberspace*, p 6.

⁹ O. A. Demowo, *Information Law in Australia*, LBC Information Service, Dyrmont, NSW, 1999, p 15.

¹⁰ H. Chand, *Modern Jurisprudence*, p 214.

¹¹ Abu Bakar Munir & Siti Hajar Mohd Yasin, *Information and Communication Technology Law, State, Internet and*

Information: Legal & Regulatory Challenges, Sweet & Maxwell Asia, Malaysia, 2010, p 71. Authors commented that the ECA 2006 has many shortcomings that “the law is with flaws.” The authors are in the committee headed by the University of Malaya reviewing the shortcomings of the ECA 2006. In a telephone conversation with one of the committee members, Siti Hajar Mohd Yasin reiterated the shortcomings of the ECA. She said no specific amendments have been done yet. The committee is brain storming all loop holes and lacunas to overcome the shortcomings. Statement by Siti Hajar Mohd Yasin (Personal communication 23 June 2010).

¹² Y. Akdeniz, C. Walker & D. Wall, *The Internet, Law and Society*, Longman, 2000, p 156 Citing Giddens in, *The Consequences of Modernity*, Polity Press, London, 1990, p 6.

¹³ S. Veitch, E. Christodoulidis, & L. Farmer, *Jurisprudence; Themes and Concepts*, Roudledge Cavendish, United Kingdom, 2007, p 249.

¹⁴ C. Reed, *Internet Law, Text and Material*, Butterworth, London, 2000, p 1.

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¹⁶ C. Reed, *Internet Law*, p 1.

¹⁷ L. Lessig, ‘The zones of cyberspace’ (1996) 48 *Stan. Law Review*, p 1403.

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¹⁹ L. Lessig, ‘The zones of cyberspace’ p 1403.

²⁰ L. Lessig, ‘The zones of cyberspace’ p 1403.

²¹ Pound, *An Introduction to the Philosophy of Law*, Yale University Press, New Haven, 1922, p 169

²² D. Pridgen, ‘How will consumers be protected on the information superhighway?’ (1997) 32 *Land & Water L. Rev.* 237.

²³ National Consumer Policy, Clause 5.1.1(b).

²⁴ Federation of Malaysian Consumer Association (FOMCA).

²⁵ Y. Akdeniz, C. Walker & D. Wall, *The Internet, Law and Society*, p 163.

²⁶ J. Goldring, ‘Consumer protection, the nation state, law, globalization, and democracy’, p 15.

²⁷ J. Goldring, ‘Consumer protection, the nation state, law, globalization, and democracy’, p 15.

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