

PROTECTION OF CHILDREN'S ONLINE PRIVACY IN MALAYSIA

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ABSTRACT

Purpose - The advantage of digital era with borderless world and having unlimited access to the Internet, enjoyed by most, if not all people, including the young or children. While the current millennials (Lenhart, Purcell, Smith, & Zickuhr, 2010) are more computer savvy than their parents (Heckman, 1999), children are also well versed with Internet and enjoy the digital access at the very young age. However, policy-makers are concern with the advancement of Internet and propagates the idea of shielding and segregating the children from the harm that may cause from access to the Internet (Allen, 2001). Also, Kumaran (2016) highlighted that although there are many benefit and advantages of the Internet but the harm and dangers it poses to the children is worrying because the informational privacy of the children is threatened by children's participation in the digital world. Moreover, children are unconcern with their privacy, or do not know how to protect their informational privacy and data protection which are of concern to adults (Allen, 2001) and they are unaware the consequence and the impact of revealing their personal information, either their own data or their family data. Some countries have enacted specific legislations to protect the privacy of the children like the Children's Online Privacy Protection Act (COPPA) in the United States of America (Hetcher, 2000) or introduced self-regulatory initiatives on online child privacy like in the European Union (EU) (Macenaite, 2016). At the international level, the Convention on the Rights of the Child (CRC) was introduced in 1989 by the United Nation (Lundy, 2012) to generally protect the children. The CRC acknowledges that the children is a group of people that needs extra care and protection. In Malaysia, the government has introduced the Child Act 2001 and the Sexual Offences Against Children Act 2017 that protect the children. However, how far these two Acts protect the online privacy of the children in Malaysia? As such, the paper seeks to examine the legal protection of online children privacy in Malaysia, focusing on the Child Act 2001.

Methodology - This paper adopts doctrinal research methods which is largely documentary. According to Salter and Mason, doctrinal research methodology is a study that focuses on the cases, rules and principles. These cases, rules and principles comprise of substantive content of legal doctrine. Deploying a deductive form of legal reasoning from legal principles is a classic form of doctrinal research method (Salter & Mason, 2007). To put it simply, doctrinal research is a research which defines what the law in a particular area is. In doing so, the researcher collects and analyses the data from the primary and secondary sources (Dobinson & Johns, 2007). Then, the data is analysed and discussed.

Findings - The paper finds that there is no specific legislation protecting privacy in Malaysia whereby the common law principle applied in Malaysia with regards to this matter. Moreover, the online privacy protection for children is not explicitly provided under any legislation. There are however a general provision under Personal Data Protection Act 2010, under section 4, defining “relevant person” in relation to a data subject, as the parent, guardian or person who has parental responsibility for the data subject who is who is below the age of eighteen years. However, it is argued that the children nowadays know more about computers and Internet use than their parents (Allen 2001). As such, the paper found that putting the responsibility solely on the parent, guardian or person who has parental responsibility for the data subject as provided under Personal Data Protection Act 2010 does not really effective in protecting the children data online, what more to protect the children online privacy. As argued by Littman (2000), as parents are inattentive to children’s use of the Internet, thus making parental intervention insufficient in creating safe environment for children online. Furthermore, Heckman (1999) suggests that parents supervision and monitoring over children activities on the Internet is ineffective because their children knows better the technology and the Internet. The paper highlights that online privacy of children in Malaysia is a big concern because it is found that most children do not know how to manage their privacy in the digital world. They are unaware of the potential risks and dangers of revealing their personal information over the Internet and thus expose them into various kinds of cybercrimes and privacy risks. It is also found that the children in Malaysia lack of information and guidance in managing their privacy online and to adequately protect their personal information from being misused, abused or stolen (Zakaria, Yew, Alias & Husain, 2011).

Last but not least, the paper also finds that the legislations that govern the protection of children in Malaysia like Child Act 2001, Penal Code, Multimedia and Communication Act 1998 and Sexual Offences Against Children Act 2017 are protecting the children from criminal offences against them like harassment, online grooming, physical abuse, pornography etc., but no explicit provision on protecting their online privacy. However, there are two general provisions that may be used to protect the privacy of children under Child Act 2001; firstly under section 15 of the Act on the restrictions on media reporting and publication. However, section 15 applies only in regards to criminal proceeding, custody and rehabilitation. Secondly, section 33 of the Act provides for offence to leave child without reasonable supervision. Again, this section is more likely to apply against parents or guardians who leave the children without reasonable supervision in the physical world rather than the online world. To apply this section to the online world, is yet to be seen and arguable.

Keywords: child, privacy, protection, online privacy, personal data.

CONCLUSIONS

The online privacy of children should be a prime concern of the legislators in Malaysia. It is acknowledged that the protection for children against abuse, harassment, grooming, sexual offences etc. has been addressed under various statutes including specific statutes like Child

Act 2001, and Sexual Offences Against Children Act 2017. However, laws should be amended to include the online privacy of the children, or for Malaysia to introduce a statute like COPPA in the United States of America, to enhance the protection of online privacy of children in Malaysia.

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