

CONSUMER PROTECTION ON ONLINE TRANSACTIONS IN KURDISTAN  
LESSONS FROM MALAYSIAN LAW

By

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## Abstrak

Baru-baru ini, peningkatan penggunaan e-dagang telah menjadi satu kepentingan dalam pembangunan sektor perniagaan. Ia telah mengubah banyak pasaran untuk memulakan peluang baru yang tidak pernah dibayangkan sebelum ini, Kurdistan dianggap sebagai salah satu daripada beberapa kawasan di dunia yang masih jauh daripada penggunaan sebenar perkhidmatan e-dagang. Pada masa ini, Kurdistan mengalami pelbagai masalah yang menjadi penghalang untuk menggunakan e-dagang secara berkesan seperti undang-undang yang tidak mencukupi melindungi pengguna secara elektronik, kurang kesedaran dan pemahaman tentang kepentingan e-dagang, kurang pengetahuan dan kemahiran dalam teknologi maklumat dan komunikasi (ICT), rangkaian infrastruktur fizikal yang tidak stabil, keselamatan serta masalah lain yang berkaitan dengan kos untuk menerima pakai teknologi baru. Kajian ini bertujuan untuk mengenalpasti isu yang berpotensi dan masalah yang dihadapi e-dagang di Kurdistan. Bagi tujuan ini, kajian telah dijalankan untuk membuat perbandingan antara Malaysia dan Kurdish daripada segi undang-undang perlindungan pengguna urusan dalam talian. Kajian ini juga menunjukkan bahawa niat kerajaan Kurdish dalam melaksanakan konteks Malaysia ke dalam undang-undang Negara daripada segi e-urusan. Sebagai sebahagian daripada pengumpulan data, kajian ini telah menjalankan dua versi temuduga iaitu formal dan tidak formal yang melibatkan tiga set soalan ditanya kepada setiap kumpulan ahli panel dari organisasi kerajaan dan bukan kerajaan di Kurdistan. Perbincangan yang diberikan daripada kajian ini memberi tumpuan kepada isu-isu teknologi dan undang-undang yang boleh memacu e-dagang di rantau ini. Cadangan telah dikemukakan untuk penambahbaikan undang-undang internet Kurdish, bagi menyediakan persekitaran elektronik yang selamat dan membawa Kurdistan ke dalam kalangan negara-negara membangun justeru menjadi ahli yang aktif dalam ekonomi digital.

**Kata kunci:** Kurdistan, Internet, E-Dagang dan Isu Undang-Undang.

## **Abstract**

Recently, the increase in the usage of e-commerce has been one of the most significant developments of business sector. It has transformed many marketplaces to start new opportunities have never been imagined before. Kurdistan is considered as one of the very few regions in the world that are still so far from the real use of inevitable services of e-commerce. Primarily, Kurdistan suffers various features that run as barriers to an effective use of e-commerce, such as inadequate laws to protect consumers electronically, lack of awareness and understanding the benefits of electronic commerce, lack of information and communication technologies (ICT) knowledge and skills, unstable physical network infrastructure, security and other problems related to costs for the adoption of a new technology. This study aims to identify potential issues and problems facing e-commerce in Kurdistan. For this purpose, the study has conducted a comparison between both Malaysian and Kurdish contexts in terms of consumer protection law on online transactions. This study also indicates the intention of Kurdish government to apply Malaysian context into its national laws in terms of e-transactions. As a part of data collection, this study has conducted two versions of formal and informal interviews involved three sets of questions asked each group of selected panelists from governmental and non-governmental organizations in Kurdistan. The given discussions by this study focused on the technological and law issues that could drive e-commerce in this region. Suggestions were given for better improvement of Kurdish internet laws to provide safe electronic environment and to bring Kurdistan amongst other developing countries to become an active member in the digital economy.

**Keywords:** Kurdistan, Internet, E-Commerce and Legal Issues.

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## **List of Abbreviations**

ACMA	Abuse of Communication Means Act 2008 (Act 6) of Kurdistan
ADMA	Asia Digital Marketing Association
B2B	Business to Business
B2C	Business to Consumer
B2G	Business to Government
C.P.A	Coalition Provisional Authority of Iraq
C2C	Consumer to Consumer
CA	Contracts Act 1950 (Act 136) of Malaysia
CMA	Communications and Multimedia Act 1998 (Act 588) of Malaysia
CPA	Consumer Protection Act 1999 (Act 599) of Malaysia
DSAPSA	Direct and Anti-Pyramid Scheme Act 1993 (Act 500) of Malaysia
EA	Electronic Acceptance
ECA	Electronic Commerce Act 2006 (Act 658) of Malaysia
ECB	Electronic Commerce Bill
ECG	Electronic Commerce Group
EDI	Electronic Data Interchange
EG	Electronic Government
EO	Electronic Offer
G2G	Government to Government
GIN	Global Information Network
IAA	Indecent Advertisement Act 1953 (Act 259) of Malaysia
ICC	Iraqi Civil Code 1951 (Act 40)
ICPA	Iraqi Consumer Protection Act 2010 (Act 1)
ICT	Information and Communication Technologies
ID	Iraqi Dinar
IICM	Iraqi Institute of Communications and Media
IPC	Iraqi Penal Code 1969 (Act 111)
ISMN	Iraqi Social Multimedia Network
IT	Information Technology
KRG	Kurdistan Regional Government
M-C	Mobile Commerce
MIMOS	Malaysian Institute of Microelectronic System
MSC	Multimedia Super Corridor
PC	Personal Computer
RM	Ringgit Malaysia
TDA	Trade Description Act 1972 (Act 87) of Malaysia
UNCITRAL	United Nations Commission on International Trade Law
UNMLEC	United Nations Model Law on Electronic Commerce
US	United States
W.W.W	World Wide Web

## List of Statutes

<b>Malaysian Statutes</b>		
<b>Name of the statute</b>	<b>Year</b>	<b>No</b>
Consumer Protection Act	1999	(Act 599)
Trade Descriptions Act	1972	(Act 87)
Communications and Multimedia Act	1998	(Act 588)
Electronic Commerce Act	2006	(Act 658)
Contracts Act	1950	(Act 136)
Direct Sales & Anti-pyramid scheme Act	1993	(Act 500)
Penal Code	1936	(Act 574)
Indecent Advertisements Act	1953	(Act 259)

<b>Kurdish Statutes</b>		
<b>Name of the statute</b>	<b>Year</b>	<b>No</b>
Iraqi Consumer Protection Act	2010	(Act 1)
Iraqi Copyright Protection Act	1971	(Act 3)
Iraqi Penal Code	1969	(Act 111)
Right of Information Act	2013	(Act 11)
Abuse of Communication Means Act	2008	(Act 6)
Iraqi Consumer Protection Act	2010	(Act 1)
Iraqi Copyright Protection Act	1971	(Act 3)
Iraqi Penal Code	1969	(Act 111)

# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

No job is so important and no matter is so urgent that we cannot perform our transactions safely. Once, his Excellency Mahathir Mohammed of Malaysia declared that "It can be no accident that there is today, no wealthy developed country that is information-poor, and no information rich country that is poor and underdeveloped" (Sanati, 2005). Recently, the mankind witnessed a giant improvement of internet technology and the world became a small universal city (Shareef, et al., 2010). Internet nowadays is considered as the best method of conducting businesses and transactions for both traders and consumers around the world. It is shortening times and efforts by creating a great contemporaneous relationship with human at home, office and workplace (Mansori, 2012).

People from all around the world can access easily to the internet and satisfy their needs of information, products, goods and services so fast by pressing only one mouse click of their personal computers or by using their smart phones. In spite of all these advantageous provided by internet, it is also become a tool of abusing consumers if it is not exercised properly. It has been around more than one decade since the internet arrived on the scene to attract businesses and consumers with the promises of new markets and new opportunities. However, in the early stages when Electronic Data Interchange (EDI) and not electronic commerce were the catch phrases, many questions were asked about the legitimacy of electronic contracting in the business and legal world. Whether, electronic contracts that they called

"paperless contracts" were real and could transactions formed by electronic messages in an electronic environment be enforceable or could be introduced into evidence in the event of dispute (Boss, 2005).

On the internationally basis, those questions have been resolved, and the key factor in this was the efforts of the United Nations Commission on International Trade Law (UNCITRAL) (Yasin, 2012), and the adoption of the United Nations Model Law on Electronic Commerce (UNMLEC) in 1996 (UN, 1996). Consumer protection has a vital role in ensuring a fair marketplace and equitable society. The aim of consumerism is to regulate and interfere in the market for protecting and empowering consumers in trade. Consumerism with its interventionist approach is indeed a great consumer interaction, ensuring equity and social justice thus contributes towards achieving equality in market and the improvement of economic efficiency by remedying market failures (Faisal, 2005). Achieving a fair balance between the needs of market providers and the consumers is certainly a major challenge to law makers. One of the most important tools in ensuring ethical trading environment is the use of consumer protection (Yusoff, 2011). Hence, protecting consumers in terms of product safety must be an important agenda for every country especially developing countries (Alsagoff, 2010).

Classically, in the past consumers were doing their daily transactions so close to home and they were protected within the scope of the rules of their national laws. The traditional theories of law in scope of contracts and the consequent obligations are difficult to implement them in the online world (Faisal, 2005). The lack of confidence when a consumer deals with commerce electronically, made him to seek safe environment in order to meet his essential requirements. The level of technological development played a prominent role in its effects on the right of

privacy of the consumer (Sulaiman, 2006). In addition, the legal protection of consumer, whether he entered into contracts to provide electronic services or when he created contracts that meet his personal needs are not clearing up of impurities suspicions. Therefore, the endless development of e-commerce prefigures the needs for unified protection of consumer in imaginary electronic market on the World Wide Web (Badir, 2005). Moreover, internet has a significant role in distributing of information. In electronic commerce relating to business to consumer (B2C) (Aziz, 2013) , it allows sellers to distribute information about their products to potential customers worldwide at a minimal expenditure and time. Internet has witnessed the evolution of a wide variety of online advertising methods used by marketers to attract consumers to buy their products (Dawood, 2012). Despite this improvement, online contracting raises many issues to name a few; false and misleading advertising, offensive advertising contents, the uncertainty in the status of online contracting, the exploitation of women and children, and spamming. Without adequate legal protection, these issues may have negative effects on personal values, safety, conduct and economic decisions of the consumer. Thus, a number of problems and challenges have occurred. Consumer protection in every activity of traders or marketers cannot be overlooked as consumers are exposed to exploitation and manipulation by irresponsible traders. Furthermore, the borderless nature of the internet increases the possibilities of false and misleading contracting claims. One of major issues that arise in e-commerce is trade fraud and misleading advertisement (Hassan, 2012).

E-commerce comes with various threats and challenges that are faced by consumers. Furthermore, uncertainty of applying laws to online transactions is another threat. It is therefore important to consider possible legal frameworks that may enhance consumer's confidence and improve legal certainty in the electronic marketplace

(Wook, 2013). What will be described in this study is an attempt to provide greater level of protection, giving consumers the details of exactly what their rights are and how they can apply them. However, it is varying from country to country depending on how they have implemented the international rules in their national law. Though, it is important to know that consumer protection laws may in some cases give a higher level of protection (European, 2005). Furthermore, to ensure that the consumers are well protected by law, it is significant to manage a well programmed plan in this concern in order to promote consumer's rights. Governments should take in consideration prosperity and wellbeing as core values of protecting consumers (Badir, 2005). It is therefore, significant to provide high levels of consumer protection in order to create safe transactions environment whether traditionally or electronically.

## **1.2 Background of the Study**

It is well known that the third world countries, including countries in the Middle East suffer from the low level of potential in the field of communications and information in comparing with the developed countries, resulting in negative consequences in the field of e-commerce, and poor access to meet the requirements of consumers and protect them (Kadim & Al-Taie, 2013). Internet plays a vital role in our daily transactions, and the rapid increasing of the usage of the internet in Malaysia due to its wishes to keep up with the advanced countries. The lack of consumer protection in Iraqi Kurdistan Region via online with the idea of applying Malaysian context in Kurdistan region is a significant point on the background of the study. The idea of the topic arose from those problems which occurred after the wide recognition and usage of the internet took place in Kurdistan, especially after Saddam's fall in 2003

(Sulaiman, 2006). Additionally, the effective initiative of Kurdistan Regional Government (KRG) to establish strong communication infrastructure and providing safe environment for consumers when they dealt with their daily transactions electronically (ICANN, 2013), increased the intention to search about those problems faced establishing the communication infrastructure in Kurdistan. Therefore, the scope of the study will be limited to give an explanation of internet networks, identifying e-consumer strategies of e-commerce, analyzing developed legal rules by international bodies, and exhibiting foreign legislations that dealt with e-commerce, and determine the applicable law in the event of disputes between the parties to the electronic contract. Thus, the study will take Iraqi Kurdistan Region as a main background according to available laws and regulations in terms of consumer protection via online contract and the interesting Malaysian context in dealing with e-commerce will be subsidiary ground of possibility to apply it in the national laws of Kurdistan.

### **1.3 Problem Statement**

Iraq is considered among developing countries, including Kurdistan (Bank, 2014). The country is being isolated from the global online trading which influences the economic growth and development and that there are still uncertainties in the importance of e-commerce among consumers (Sanati, 2005). Hence, the benefits and use of Internet has not been realized in full.

In most cases, the successive Iraqi governments, and for political reasons, tried to create a monopoly in marketing by prohibiting new establishments from entering the market. Another reason why Internet costs are high and connection speeds are low in



Iraq is because internet service providers are not allowed to provide their own international gateways (Kadim & Al-Taie, 2013).

Problem of the study lies in the modernity of internet itself in Kurdistan region (Sulaiman, 2006). The use of the internet in Iraq in general and Kurdistan Region in particular, is limited to the uses of well-known social networks compared to developed countries, where the use of the internet in Kurdistan has only started in 2000 officially (Motac, 2014). The reason behind this was essentially due to the instability of political and economic situation faced by the country during Saddam's time (Kadim & Al-Taie, 2013). In addition, the lack of use of electronic commerce in Kurdistan region and the lack of reliance on Internet services in the establishment of the various legal actions, whether in commercial or non-commercial transactions in comparing with those countries that made great strides in this area, has led to the demotion of e-commerce in Kurdistan (Ismail, 2014). Furthermore, lack of sources, legal documents, researches, scientific studies, and the inadequacy of judicial decisions were absent in addressing the issue of consumer protection electronically (Ahmad, 2014). Hence, it is quite possible to divide the statement of problem into the following basic issues:

### **1.3.1 Technical Issues**

The installation of the communication infrastructure in Kurdistan region is poor (Ismail, 2014). Additionally, lack of wireless technology and fiber optic providers lead to lack of an adequate system for frequency management, which leads to frequency interference among the internet provider companies in Kurdistan region (Motac, 2014). Kurdistan Regional Government does not own its private internet domain, which provides Internet hubs, while it purchases such a domain from the

central government of Iraq (Ismail, 2014). There is no electronic advertisement service in Kurdistan, especially when a consumer tries to purchase new software version of Apple Apps. The reason goes to lack of electronic Apps store in Kurdistan (Communities, 2013).

The access to the internet in Kurdistan region as a part of Iraq is still expensive (Motac, 2014). It is also unreliable because of the poor telephone communications and the inadequate power supply, as the total production of electricity in Iraq by 2010 was 48.96 billion kWh against 55.66 billion kWh of consumption, with 6.7 billion kWh being imported from neighboring countries such as Turkey, Iran, and Jordan (Electricity, 2010). Lack of confidence to e-commerce made online transactions impossible in Kurdistan (Tahir, 2014). Nonetheless, the percentage of conducting e-commerce among Kurdish consumers is 10% of the population of Kurdistan which is about 7 million (Rudaw, 2014).

### **1.3.2 Legal Issues**

The most serious problem that revolves around this study is that there is still no legislation for protecting consumers via online contracting in Kurdistan region (Ismail, 2014). Furthermore, Lack of recognition of electronic documents in Kurdistan. The reason behind this is that the government institutions still operate their daily works based on the traditional way of dealing with documents (Ismail, 2014).

### **1.3.3 Language Issue**

Language has been identified as a socio-cultural impediment that hinders both accesses to information and to the Internet and participation in e-commerce. Language is important because it is a gateway of information and knowledge transfer in the digital world (Faisal, 2005). A large portion of people in Kurdistan region cannot understand or even speak English (Ismail, 2014).

A giant portion of web sites is in English and that is a huge obstacle for Kurdish speakers who can only write and read Kurdish (Barbarani, 2013). Familiarity with English is found to be essential for using the Internet. In Iraq, the number of people who speak English (as a second language) constitutes about 10% of the population of Iraq in 2012, which is 31,700,000 (Kadim & Al-Taie, 2013). The level of English language skills overall is low, even among educated professionals and academics. Some students have access to the Internet and personal computers at home. However, poor English language skills limit their access to English-language Internet sites and services.

### **1.4 Objective of the Study**

Our contemporary world is witnessing a tremendous development in communication media, especially after the discovery of the World Wide Web (W.W.W) or Global Information Network (GIN). It facilitates the process of communication and exchange of information between various countries. Additionally, it brought up a remarkable development that made the world turn into a small global city in which factors of; time and distance lose their importance (Sulaiman, 2006).

The objective of this study is to determine what Internet networks are and the possibility of linking legal conducts with available material facts in Kurdistan region,

and how to apply them in the field of concluding transactions by these networks as a way to express the willingness of contracting parties.

Moreover, the objective of the study will conclude consumer's protection from the negative effects of this type of contract which called "e-contract" in order to address the legal aspects of these contracts, and determine the type of legal protection for the consumer and choosing applicable law in the event of a dispute between the parties to the contract at the international and local levels.

Other points could be added to the objectives of the study, such as attempts for applying and inserting Malaysian context in terms of consumer protection via online into the local legal system of Kurdistan, determining the concept of internet networks and its scope in Kurdistan region, as well as linking them with legal actions, explaining the coverage of both Malaysian and Iraqi Kurdistan region laws and regulations in the event of e-commerce, and how to handle them in order to obtain safe system of transaction through the internet, identifying strategy for electronic commerce in Kurdistan, highlighting those measurements to reduce trade fraud and misleading advertisement in dealing with online transactions, determining the applicable laws in the event of disputes occur between the contracting parties, whether locally or internationally. Therefore, the objectives of the study could be summarized into the following main points:

- 1- To study the internet law and its issues in Kurdistan.
- 2- To compare Kurdish internet law with Malaysian internet law.
- 3- To suggest for better improvement of the Kurdish internet law.

## **1.5 Research Questions**

This study is to answer the following questions:

- 1- What are the challenges and issues that are faced in e-transactions or internet law in Kurdistan?
- 2- What is the scope of using internet in Iraqi Kurdistan Region relating to commerce transactions?
- 3- Are there any initial attempts taken by Kurdistan Regional Government (KRG) for establishing new laws and regulations related to consumer protection via online?
- 4- Is there any possibility of applying Malaysian context into the local legal system of Kurdistan Region in terms of consumer protection on online transactions?

## **1.6 Significance of the Study**

The business sector (business to business) (B2B), and consumers' sector (business to consumer) (B2C) are the biggest beneficiaries of internet networks, because they provide a variety of services with potential of distinct data transfer means (Manap, 2011), and modern mechanisms to conduct negotiations and concluding contracts, which they commonly termed e-contracts (Kadim & Al-Taie, 2013). The commercial field went online effectively since the beginning of the nineties of the last century that led to conduct business electronically within the framework of e-commerce, which formed a major challenge in face of the majority of legal systems around the world (Sulaiman, 2006). The importance of this study comprise of legal principles prevailing in doing business and protecting consumers via online contracts. Thus, the study attempts to address legal value of e-contracts and how to provide protection for consumers electronically in Kurdistan Region, whether in local or international levels. The following points could be inserted into the significance of this study:

- 1- On one hand, making co-relation between Malaysian and Iraqi Kurdistan Region contexts in dealing with consumer protection on the internet as well as comparing them as two different legal systems. On the other hand, describing the legal implications of applying commerce through internet.
- 2- Explanation of the acceptable strategy for e-commerce and those measurements to be taken due to reduce trade fraud and misleading advertisement on online shopping in order to obtain safe transaction environment for Kurdish consumers.
- 3- Applying e-commerce as a new method of transaction in Kurdistan in order to improve the development of the country to be able to compete with advanced countries, as well as to lead Kurdistan Regional Government (KRG) for establishing new e-government system.

### **1.7 Scope of the Study**

The scope of this study could be determined by examining the invented legal rules by international institutions and organizations that dealt with organizing e-contracts. Additionally, the study will attempt to explain the available legal materials of Malaysia and Iraqi Kurdistan contexts, as well as other applicable legal rules in terms of consumer protection via online contract, and possibilities of applying Malaysian context into national laws of Kurdistan. Hence, the study will focus and depend on available Malaysian and Iraqi Kurdish legislations, as well as an adoption of other international laws relating to e-commerce.

## **1.8 Limitation of the Study**

Lack of law cases involving internet issues in both Malaysia and Kurdistan stand as barriers in front of this study because the issue of consumer protection on online transactions is quite new. The study also has faced many difficulties for collecting necessary data during the interview procedures. This is because of many reasons, such as confidentiality of information, short timing of the interview, transportation issue and far distances between the selected organizations. In addition, the issue of online transactions in Kurdistan is new and not being in fully planned. Furthermore, the lack of an adequate legal system, inactiveness of judicial system, lack of reported cases relating to trade fraud on online transactions because of the lack of specific institution for reporting these cases properly made the procedures of collecting data more difficult. In spite of these difficulties, efforts have been made as far as possible in order to collect necessary data.

## **1.9 Operational Definitions**

First of all, the study gives general definitions to the following:

### **1.9.1 Internet**

The study provides three definitions of internet which are most related to the topic. Firstly, internet is a set of global networks connected to each other via computer that enables consumers to contract and conduct their daily transactions electronically by shortening time and distance. This definition is much preferable and fit with the study because the definition covers all elements of the study.

Secondly, internet is a global network of various interconnected computer networks and, so that each of them is able to broadcast programmes simultaneously. The word

"Online" means interrelated network consisting of computers, software and human crew that made up of service providers and consumers (Faisal, 2005).

Last but not least, internet could make each of different kinds of computers attached to the network directly, to walk paths on the road of ultra-informatics and availability of products and services across the planet (Badir, 2005).

### **1.9.2 Electronic Commerce**

There are two main definitions of electronic commerce related to the topic of the study. Firstly, e-commerce is the sharing of business information, maintaining business relationships, and the conducting business transactions by means of telecommunications networks (Zwass, 1996).

Secondly, e-commerce is the use of global internet for purchasing and selling of goods and services, including service and support after the sale (Gao, 2014). The study prefers the first definition because it is general and covers the subject of the study.

### **1.9.3 Electronic Transaction**

The study gives three types of definitions to electronic transactions. First definition is that e-transaction is a contract made between its dealers through the use of different electronic devices and means (Hijazi, 2006).

Another definition for e-transaction is a document that expresses free consent during market transactions according to the reference model of electronic markets (Gisler, 2000). This definition is more suitable for the study because it defines e-transaction according to the model of electronic markets which will be explained in the next chapter of this study.



The third definition defines e-transaction as any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail (Badir, 2005).

#### **1.9.4 Electronic Consumer**

The study provides two main definitions of electronic consumer related to the topic. The first definition defines e-consumer as a natural person deals in the range of electronic commerce and receives advertising for items and purchase them electronically (Hijazi, 2006). The second one is that electronic consumers are individuals who purchase, use, maintain, and dispose of products and services online (Badir, 2005). The study accepts the first definition of e-commerce because it deals with both contracts and advertisements electronically.

#### **1.10 Research Planning**

On the light of the above and an addition to the preface, acknowledgement, and list of abbreviations, the study will be formatted within five chapters as follows:

- 1- Chapter one will deal with giving general introduction, background, Statement of the problem, objectivity, research questions, significance, scope, and operational definitions.
- 2- Chapter two will present literature review
- 3- Chapter three will state the methodology of the study.
- 4- Chapter four will be on findings of the study by describing and analyzing related available statutes in both Malaysia and Kurdistan based on data collected from the governmental and non-governmental organizations in Kurdistan related to the topic.
- 5- Chapter five will be on suggestions, conclusions, and summaries.

### **1.11 Summary**

All in all, Kurdistan region is witnessing a wide usage of internet among its population, especially among young people (new generation). However, this usage of internet is only for satisfying personal needs through the well-known social networks. In fact, there are only 10% of Kurdish consumers conducting e-commerce. This is due to many reasons, such as the lack of adequate communication infrastructure in Kurdistan, instable technical system, lack of specific laws and regulations to protect consumers on online transactions, weakness of electronic banking system, and lack of understanding English language, lack of information and communication technology skills. Therefore, all these reasons work as barriers hindering the application of e-commerce and crack the confidence of the consumers to apply transactions electronically.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

To make the subject of the study more informative and academic on the issue of consumer protection on online transactions, we must examine and describe previous studies made on this subject, especially after the development of the internet significantly in the last decade and the growing appetite of consumers to use the Internet as a faster way for their daily transactions of purchasing, selling, supplying services, and advertisements (Boss, 2005).

However, there are many barriers hindering the implementation of e-commerce relating to socio-economic, and socio-cultural. The reason behind this is due to the modernity of the internet itself and the weakness of traditional laws to govern the subject of contracts via internet, as it involves technical elements of IT technology related to data processes remotely by using of computers (Lawrence, 2014).

Generally speaking, the subject of e-transactions is a new method to create legal relations online, and comprises many issues, such as trade fraud, and misleading advertisement. Therefore, legal remedies are required to be described and analyzed. This study attempts to give a critical overview of many studies made in the scope of e-commerce and go furthermore in order to contain and cover the issue of consumer protection on online transactions.

## **2.2 Articles Relating to Previous Issues in E-Commerce**

This study attempts to give a critical review of the following previous studies regarding consumer protection on online. However, there are no recent writings have been conducted in Kurdistan on the issue of consumer protection on online transactions. Additionally, this study will go furthermore in details to deal with the issue of online transactions to provide full consumer protection in Kurdistan.

1- Consumer Protection Relating to Online Advertising in Malaysia, by Nur Hidayah Ab Aziz (Aziz, 2013). The study explained online advertising in Malaysia descriptively by concluding many laws of Malaysian legal system in terms of consumer protection, especially Consumer Protection Act (CPA 1999). The author of the study was quite successful in dealing with the subject. However, the author did not realize that advertising whether classically or electronically is not an offer made by a party to meet an acceptance of another party. While it is more invitation to treat according to Contracts Act 1950 of Malaysia. For example, suppose that someone put an advertisement on the specified website offering to sell his guitar for RM 200.00. Then seven people click "Buy" bottom on their personal computers (PC) and accept the offer before he can remove the advertisement for the said guitar. If the advertisement were truly an offer, he would be bound by seven contracts to sell his guitar. Therefore, advertisement is only an attempt to induce offers and it is not an offer in itself. In Malaysia, the principle of invitation to treat is first adopted by the Malaysian court in the case of *Nai Yau Juu v. Pasdec Corp Sdn. Bhd. & Anor* [2005] 3 MLJ 431. The court pointed out that one-sided contract can be strained from advertisements but even in advertisements where a house is advertised there is often further bargaining. The parties may legally also wish to ascertain that the other party is also financially able to undertake the transaction. In advertisements a seller

circulating a price list or other promotional materials giving particulars of the products for sale is usually also said not to be making an offer, even if the word 'offer' were to be used. Therefore, advertisements giving particulars of the products for sale cannot be treated as offers. This case proves that all advertisements are invitation to treat.

2- Harmonized Development of Legal Regulatory System for E-Commerce in Asia and Pacific, by Amelia H. Boss, (Boss, 2005). This study explained the importance of Electronic Contracting among its parties analytically, by analyzing those problems faced by the parties in e-contracts and tried to find out adequate solutions. The author of this study had depended on the United Nations Commission on International Trade Law (UNCITRAL) in 1992 and the adoption of the United Nations Model Law on Electronic Commerce (UNMLEC) in 1996 to show the development levels of legal system for electronic commerce in Asia and Pacific. The author established her thoughts based on American experience as an intention to solve those problems of electronic contracts in Asian countries. Furthermore, the author explained some types of transactions on the Internet when a consumer purchases products that most national disputes arise from conducting these kinds of transactions electronically. However, in this point of view, the author ignored those international cases addressing this important issue and the applicable laws in the event of international disputes.

3- Consumer Protection in Electronic Contracts, by Hossein Kaviar, (Kaviar, 2011). The author in his study explained the significance of establishing safe electronic environment for consumers when they deal with their daily transactions. The study paid much attention to those transactions made between individuals and traders which are called Business to Consumer Marketing Model (B2C). The author stated

that consumer is a weaker party of any contract. With no doubt, this idea is acceptable and there is no conflict that consumer is in need to provide safe electronic environment. However, there are many parties into e-contracts require legal protection. The author did not realize that the legal protection is not only for consumers as weaker parties into e-contracts. Whereas, other parties into contracts are demanding protection, especially when their privacy exposed to threat by others.

4- E-Commerce and Consumer Protection in Malaysia: Advertisement and False Description, by Kamal Halili Hassan, (Hassan, 2012). The writing dealt with advertisement on the Internet in Malaysia as a new method of marketing. The author had explained the role of law to protect consumers in Malaysia from misleading or false advertisement, by stating that advertising online is widely used either to promote goods sold or to entice consumer towards a particular website especially in e-commerce relating to Business to Consumer (B2C). The author in his writing focused on the Trade Description Act (TDA) 1972 of Malaysia that this Act can also be applied to e-commerce unlike the Consumer Protection Act CPA 1999. In fact, according to section 2(g) of CPA specifically excludes such transactions, unless the Minister by a Gazette declared otherwise. It looks that there is a beacon of hope for electronic transactions to be included within the domain of the CPA as it is possible implementation can be made just through Ministerial declaration, not through legislative modification. The author was totally successful in his point of view, and the new study should agree with his idea. However, he did not aware that the CPA 1999 providing protection and warrantee for consumers in dealing with traditional transactions and it could be applicable to those conducted transactions on the internet as a way to express willingness, because the only different between classical contract and e-contract is the way of concluding a contract. For example, the use of papers is

required in classical contract whereas it is paperless in concluding e-contract. Therefore, both are still contracts and the difference is the way of expressing offers or acceptance.

5- Protection of Database under Actionable Torts, by Nazura Abdul Manap, (Manap, 2011). This paper was based on providing legal protection for computer database relating to the term of business's privacy. The author had explained her subject depending on those transactions made between two models of electronic marketing. The first one is Business to Consumer (B2C), and the other one is Business to Business. The author was successful in dealing with the subject, especially by giving an adequate database definition that it is "a quantity of data available for use, which is sorted in a computer in a way that enables people to get information out of it very quickly". This definition seems to confine the meaning of database to an electronic or computer database. However, as an opinion, it is an acceptable fact if database can include a physical database which is non electronic in nature. There is no objection that technical definition of "database" is vital in determining legal protections of database because the process of selecting and arranging data may raise a question of copy right protection. Thus, the author succeeded on this point. Nevertheless, by this idea the right of protecting consumers has been ignored because the study paid more priority to business rights of protection in terms of B2C marketing model.

6- Drivers and Impediments to E-Commerce in Malaysia, by John Paynter and Jacki Lim, (Paynter & Lim, 2001). This writing deals analytically with online shopping in Malaysia as a new form of commerce. The authors focused on factors that influence the practice of online shopping for leading Malaysian community to achieve high levels of information technology education among Internet consumers, as well as establishing a powerful IT infrastructure in Malaysia. Actually, it is a kind gesture by

the authors to include those advantageous of applying online shopping in Malaysia. However, they might ignore the disadvantageous of conducting such a method because consumers are still considered as weaker parties in e-contracts.

7- Consumer Protection in E-Commerce: The Current Legal Framework in Malaysia, by Izawati Wook, (Wook, 2013). The paper had examined the existing legal framework in Malaysia in protecting the interest of the consumer in e-commerce. The author was more interested in those transactions involving business to consumer (B2C). Thus, she mentioned that e-commerce in Malaysia is quite reliable compared with other developed countries. However, it is projected that e-commerce will continue to prosper in the Malaysian market due to necessary measures undertaken by the government for the past several years to support the progress of e-commerce like Multimedia Super Corridor (MSC) projects establishing the multimedia university and encouraging banking institutions to venture into electronic banking transactions. The writer proposed an overview of Malaysian laws in dealing with consumer protection on online, which is across point with the new study of consumer protection on online transactions in Kurdistan. Furthermore, the study took giant consideration of protecting individuals through internet. However, the author might not mention those online transactions between other marketing models.

8- Barriers Hindering E-Commerce Adoption: A Case Study of Kurdistan Region of Iraq, by Japhet E. Lawrence, (Lawrence, 2014). The author had adopted those barriers delaying e-commerce in Kurdistan by saying that the environmental contexts and conditions in Kurdistan are not yet beneficial and conducive to widespread adoption of e-commerce. In addition, Kurdistan still suffers from disabling deficiencies, scarcities, and shortfalls in numerous areas of development. Moreover, these different characteristics of infrastructural, socio-economic, and socio-cultural



have created a significant level of variation in the adoption of e-commerce in Kurdistan. The writer was successful in showing the obstacles that led to the delay in Kurdish e-commerce. Therefore, the new study should agree with the author that those factors are more technical rather than legal. Nevertheless, the author failed to make a co-relation between technical and legal aspects in Kurdistan because of many reasons, such as lack of e-documents recognition, and lack of internet laws to protect Kurdish consumers.

9- Fast Past Law with Flaws, by Abu Bakar Munir, (Munir, 2012). The writing deals with proposing electronic commerce bill (ECB) in Malaysia. Saying that the purpose of the proposed law is to combat the barriers facing e-commerce and strengthen the cyberspace framework. The author was successful in the point of giving electronic message the legal recognition, as well as recognition of electronic signature by concluding that the barriers should be removed in order to reach the potential of electronic commerce in Malaysia. Hence, the use of an electronic agent in the formation of a contract should be given legal recognition. However, the author did not mention the formation of electronic signature.

10- E-Commerce Strategy for Southern Kurdistan Region, by Farzad Sanati, (Sanati, 2005). The paper identified potential issues and problems that are associated with information systems and technology setup of e-commerce in Kurdistan. The author proposed a great point that most transactions in Kurdistan whether in private or public sectors are paper-based operated, and performed manually whereas the study ignored the reality of Kurdish community in dealing with internet transactions. In fact that the internet infrastructures are still inadequate in Kurdistan, as well as there are no much legal recognition of e-documents.

11- Kurdistan Region E-Government: Requirements and Benefits, by Sarhan S. Dawood (Dawood, 2012). The writing deals with implementing best foundation of e-government in Kurdistan in order to create safe electronic environment among governmental institutions. The author achieved high strategies in dealing with the subject by concluding factors of adequate administration system on the internet for Kurdistan Regional Government (KRG), which opens enormous fields to dispense the classical administration to deal with official papers. Besides that, the study had provided a system of shifting governmental transactions from decentralization to centralization in dealing with official documents when the governmental institutions were based on the traditional transmissions, such as post office, or appointing a special public servant to do so. The author was successful in dealing with the subject by explaining requirements and benefits of establishing e-government in Kurdistan whereas, he was in absence of mentioning benefits of Kurdish consumers.

12- Vision of Electronic Government Implementation in Kurdistan Region of Iraq, by Shareef, Shareef; Pimenidis, Elias; Arreymbi, Johnnes; Jahankhani, and Hamid, (Shareef, et al., 2010). The paper had explored the potential of initiating an enhanced programme of delivering government services through a multimedia of channels that embrace electronic communication media in Kurdistan. The study is more focused on the status of technological infrastructure, levels of available skills, and more importantly the desires and expectations of citizens as well as government and employees in Kurdistan. The author had depended on the issues of cultural differences, technical competences, education, and trust as vital factors of good implementation of e-government. Furthermore, the author explained the classifications of e-government, such as provider side, and required side. Hence, the

paper had paid huge consideration to the establishment of e-government without giving any recognition of official documents on online (e-documents).

13- Factors Disrupting a Successful Implementation of E-Commerce in Iraq, by Ali M. Kadhim, (Kadim & Al-Taie, 2013). The study involved those factors of hindering e-commerce in Iraq, especially focused on the issue of communication infrastructure, by saying that Iraq has suffered from low level of such infrastructure, thus, consequently led to delay of e-commerce. The author was quite successful in dealing with the issue of infrastructure, especially when e-commerce could be a good alternative to traditional commercial transactions. Moreover, the author had explained many technical aspects of establishing successful IT education in Iraq, while the legal framework was absence in passages of the study.

14- A study of E-Shopping Intention in Malaysia: The Influence of Generation X and Y, by Shaheen Mansori, (Mansori, 2012). The paper showed that the development in the commercial sector coupled with the increasing popularity of the internet has attracted Malaysian businesses to aware of the significance of e-shopping in gaining a competitive edge in the global market. The author had described the factors that influence online shopping intention would help the planning of better marketing strategies. In addition, the study had proposed five factors to improve e-commerce in Malaysia, such as perceived benefits, website characteristics, perceived risk, perceived pricing, as well as product and service attributes. The author found that four factors were significantly influenced online shopping intention in Malaysia, while the only one exception was product and service attributes. According to the author, generation gap was found to have moderating effect on the relationships between perceived benefits, website characteristics and shopping online intention. Furthermore, the author was quite successful in dealing with proposing such factors

to influence e-shopping in Malaysia by saying that these factors could reduce consumer's time and efforts in doing their transactions. However, the author might mention the positive vision of influencing e-shopping in Malaysia, while ignored the negative effects, such as trade fraud, and misleading advertisement on online transactions.

15- Consumer's Trust in Electronic Transactions: The Role of Perceived Privacy and Perceived Security, by Ramanth K. Chellappa, (Chellappa, 2007) . The paper has showed the effectiveness of two factors that influence the trust of consumers to e-commerce, such as perceived privacy, and perceived security. The author had mentioned that consumer's trust in their online transactions is important for the sustained progress and development of electronic commerce. Additionally, the study had examined factors of trust, such as vendor's reputation, consumer's perception of privacy, and security by concluding that consumers are exhibiting variability in their awareness of privacy, security, and trust between online and offline transactions even if it is applied with same store. Besides that, the author was quite successful in dealing with mentioned factors, especially when consumer's perceived privacy and perceived security are indeed distinct constructs. Therefore, the new study shall agree with given ideas of strengthen the trust of consumers towards online transactions. However, the author was about giving priority to the privacy and security of consumers with ignoring the privacy of internet itself when consumers access to the available websites.

### **2.3 Reality of Internet in Malaysia**

Malaysian government has been a keen supporter of Internet technology since the early nineties, and the story of commercial Internet in Malaysia began in 1990, when the Malaysian Institute of Microelectronic System (MIMOS) launched into advanced integrated networking with the installation of a satellite linked between Malaysia and the US, that allowed users to access easily to the internet (Nitc, 2003). The year 1995 is considered as the beginning of Internet age in Malaysia. The growth of Internet hosts in Malaysia began around 1996 (Paynter & Lim, 2001). According to the first Malaysian internet survey conducted from October to November 1995 by MIMOS and Beta Interactive Services, "one out of every thousand Malaysians had access to the Internet (20,000 Internet users out of a population of 20 million) (Beta Interactive Services, 1996). In 1998, this number grew to 2.6% of the population. The total number of computer units sold, which was 467,000 in 1998 and 701,000 in 2000 indicated an increasing growth". E-commerce seems to be only started to blossom in Malaysia since year 2011. It is also the year in which more related foreign electronic commerce companies started venturing into local market (Wook, 2013).

### **2.4 An Overview of Consumer Protection on Online in Malaysia**

Marketing in Malaysia is not exempted from the online marketing revolution. For example advertising industry in Malaysia is somewhat new and it has become a widespread method of marketing goods and services to consumers (Aziz, 2013). According to a research conducted by Asia Digital Marketing Association (ADMA) in 2011 showed that online advertising in Malaysia continued to grow with RM52.15 million spent in 2010, which rose to 28.9% from 2009 (Adma, 2011). The durable development was due to the growth of a wide variety of online advertising methods

which have a capability to provide desirable benefits to both marketers and consumers in many ways. For marketers, it is well-known that online advertising reduces cost and time, minimizes effort, and it can be an effective instrument to generate sales (Ariffin, 2010). Consumers gain chances to gather comprehensive product information via easy click-through, thus saving their time, as well as they could be beneficial from better product choice and lower costs (Wook, 2013).

#### **2.4.1 Protection under Consumer Protection Act 1999 (Act 599)**

The Consumer Protection Act 1999 (CPA) provides a foundation for the control of advertisements. The Act basically regulates practices which are considered unfair to consumers including unfair online advertising practices. In efforts to restrain misleading online advertisements, the CPA has been amended in 2007 in order to include its application to those transactions that affected by the usage of internet. According to section 2 of the CPA, this Act could be applicable to electronic transactions with the prescription given by the Minister. According to Sections 9, 10, and 11 of the CPA, the given protections are consumer protections against misleading, deceptive conduct, false representations, and unfair practices. Additionally, both sections 12 (1), and 13 of the CPA stated that one main unfair practices is to give misleading indication as to price, and this includes bait or temptation advertising. Temptation advertising occurs when someone puts an advertisement of goods or services for which it is not aimed to provide advertisement or that he does not believe it is reasonable can be supplied at the price initially offered and in reasonable quantities, taking into consideration the nature of the market and which transmits on business. Goods or services advertised could be out of standard, and of low quality, or low merchantable description. Thus, the

advertising is considered as fraudulent or misleading to the consumer as it is to entice the consumer by advertising of low-priced product but then persuaded to buy the products at higher prices (Salleh, 2010). Furthermore, section 14 of the CPA also forbids any one from offering any gift, prize or other free items without intention of providing it or providing it as offered. It could be suggested that this prohibition connects to bait advertising as provided in section 13 of the CPA as in both situations, the intention of advertisers is to entice potential customers to enter into transactions with them. The recent overview of a new provision in the CPA for the formation of a committee on advertisement indicates the latest expansion in Malaysian law regarding to consumer protection in the scope of advertising (Wook, 2013). According to section 84 of the CPA, the committee is in charge of examining complaints relating to advertisements, and to issue information relating to the nature and features of goods or services that may cause damages to consumers. Moreover, according to section 85, the consumer may pursue compensation against dishonest advertisers for any loss or damage suffered through a tribunal for consumer claims.

#### **2.4.2 Protection under the Trade Descriptions Act 1972 (Act 87)**

The Trade Description Act 1972 (TDA) is a criminal statute in nature which fundamentally prohibits false or misleading statements in the supply of goods and services and it is applicable to both consumers as well as traders. According to section 2 of the TDA, online advertisement is not expressly included in the definition of an 'advertisement', the definition is considered to include all forms of advertisement, whether printed or electronic. Generally, legislations do not directly deal with online advertising, their applicability to online advertising or to address some of emerging consumer issues relating to online advertising cannot simply be

ignored. According to section 7A of the TDA, a person who directly or indirectly offers to supply the goods or services and/or the person on whose behalf the advertisement is made is considered to have applied a trade description. Therefore, in the case of an advertisement in a third-party website, responsibility can arise on both owner of the website marketer. Other than false trade description, the TDA in its section 14 (1) prohibits false and misleading indications as to price of goods, and this shall include price display in an advertisement. Section 15 of TDA also forbids false representation in supplying goods or services.

Thus, two elements should to be proved. First, a person must be in the course of trade or business, and second, there is a false indication that any goods or services supplied are of a kind supplied to or approved by any person. The TDA protects the consumer only if the supplier is in the course of business. If, however, the supplier is a private supplier, the principle would not apply.

#### **2.4.3 Protection under Communications and Multimedia Act 1998 (Act 588)**

The Communications and Multimedia Act (CMA) is the primary legislation that regulates online actions. In relation to online advertising, section 4(2) of the CMA regulates only online advertisements to the range that the advertisements are provided by service providers licensed under the CMA, and this creates a major limitation of this Act that imaginably prejudices the interest of the consumers as a whole. However, this Act does not specifically deal with online advertising but deals generally with offensive content by the virtue of section 213 of the CMA. Another point is that Malaysia has no specific code dealing with online advertising, to endure consumers a reliable method to challenging unacceptable online advertisements (Aziz, 2013). Thus, no sanctions can be imposed for poor compliance. It seems that



the issue of liability is not properly set out by the CMA. Therefore, consumers will not know what and how much rights and protection they actually have. In relation to spam e-mails, section 233 does not expressly address spam but deals with the so-called 'unsolicited communications'. It is unfortunate that Malaysia has no rule on spam e-mails (Wook, 2013).

#### **2.4.4 Protection under Electronic Commerce Act 2006 (Act 658)**

The Electronic Commerce Act 2006 (ECA) basically provides for the legal recognition of electronic messages to facilitate commercial transactions on electronic media in accordance with section 6(1) of the ECA. 'Commercial Transaction' is defined in section 5 to mean "a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance." Based on this definition, an advertisement can be considered as a commercial transaction despite the fact that it is not contractual in nature. Since the rapid growth of the Internet as a new method of commercial communication today, it is certainly a good development to expressly regulate online transactions. However, as far as the formation of online contracts is concerned, the ECA simply shows that the basic contractual principles as brought out in the Contracts Act 1950 of Malaysia apply to the formation of online contracts without addressing consumer protection in accordance with the virtue of section 7 (1) of ECA. Additionally, there are no cases decided under the Malaysian ECA 2006 (Yusoff, 2011). However, one of the important cases in the ASEAN region concerning mistake in online transactions is the Singapore case of Chwee Kin Keong v. Digilandmall.com Pte Ltd [2005] 2 LRC 28. The defendant in this case is a Singaporean company vending IT

products, had established a website offering several products over the internet. The said company also operated another website owned by Hewlett Packard (HP) for a similar purpose. One of the products offered on both websites was an HP laser printer. The printer was priced at \$3854 on both websites. The defendant had wrongly advertised the price of laser printers on their website at \$66 each, instead of the actual price of \$3854. A total of 4086 printers were ordered before the defendant realized the mistake. The defendant quickly removed the advertisement from its website and informed all the purchasers that the price was undesirable mistake and that no orders will be met. Out of 784 persons who placed the orders, only six plaintiffs attempted to enforce their alleged contractual rights. The trial judge found that the appellants had actual or constructive knowledge of the mistake in the pricing of the printer. He held that the appellants' constructive knowledge was sufficient to render the contracts void under common law.

#### **2.4.5 Protection under Contracts Act 1950 (Act 136)**

The Contracts Act 1950 (CA) manages principles relating to the formation of a contract. Part II of this Act provides for additional consumer protection relating to online transactions. As a general rule, the formation of a binding contract is complete when there is an offer, acceptance, consideration, and an intention to create a legal relation. The law on electronic transactions is clearly assured in the Section 7 of the ECA 2006 states that offers and acceptances may be made electronically. Thus, those principles relating to the formation of contracts set out in the Contracts Act 1950 are equally applicable to online contracts. In online transactions, there is a question poses itself whether advertisements are contracts or just an invitation to treat. Unfortunately, there is no provision in the Contracts Act 1950 or in the Electronic

Commerce Act 2006 concerning the status of online advertisements. In general, the position in Malaysia is governed by the common law principle of invitation to treat.

#### **2.4.6 Protection under Direct Sales & Anti-Pyramid Scheme Act 1993 (Act 500)**

The Direct Sales & Anti-pyramid scheme Act 1993 (DSAPSA) has been amended in 2010 to provide regulations of direct selling and prohibition of pyramid scheme activities. Delightfully, the amendment has covered matters which are of considerable significance to consumers, including online advertising. The new section 19A prohibits advertising of goods or services on internet in a mail order sale, except in accordance with this Act. Therefore, a person cannot advertise on the internet while he may receive an offer for sale through the internet such as via e-mails. All electronic commerce companies must therefore have licenses for direct sales and comply with the direct sales law. The Domestic Trade, Cooperatives and Consumerism Minister, Datuk Ismail Sabri Yaakob, highlighted that the main purpose of the 2010 amendment is to protect consumers from being cheated by those people who attempt to maximize profit from direct sales activities (Yaakob, 2010). Nonetheless, the effectiveness of the Act is yet to be determined because of the absence of case law at the moment in Malaysia.

#### **2.4.7 Protection under Penal Code 1936 (Act 574)**

The Penal Code 1936 provides for the law on the offence of publication of offensive materials. This Act not only deals with the offensive materials in the physical medium such as books and publications, but the words "any other obscene object whatsoever" in section 292 shall include obscene materials in intangible medium as well such as the internet. In section 292(a) of the Act cover video compact discs which store visual images and reproduce them when they are played. Hence, the construction of the word "object" should be broadened in order to include all manners and objects that are in offensive nature. A similar method should be applicable to publication of advertisements on the internet as well. However, the penal code does not define the expression "obscene", but simply provides the situations in which obscenity is an offence in accordance with section 292. Nevertheless, it is important that the term "obscene" must be defined and understood from outset in order to constitute an offence under this Act. In addition, section 293 prohibits the distribution of offensive materials to a person who is under the age of twenty years. The offender will be charged with a term of up to five years of imprisonment or a fine or both. This section is of value to young people who are more susceptible to acts of obscenity in advertisements than adults.

#### **2.4.8 Protection under Indecent Advertisements Act 1953 (Act 259)**

The Indecent Advertisements Act 1953 (IAA) is a specific legislation prohibiting advertisements that are indecent or obscene. However, in its section 3 the Act shows very loose in many aspects, such as excluding the non-printed advertisements from its application. In this point, the legislature regrettably fails to give a suitable consideration to many available methods of advertisements especially the electronic medium. Moreover, section 1 (2) of the Act is only applicable to Peninsular Malaysia and Sabah and Sarawak. Another aspect is that the terms "indecent" or "obscene" are not defined in the IAA 1953. However, it is very clear based on the title of this Act that the intention of the legislature is to forbid indecent advertisements. It is therefore left to the specialized courts to make subjective interpretation of whether pictures, printed, or written documents are in obscene or indecent nature (Aziz, 2013). Therefore, it is quite difficult to provide definite and maximum protections to consumers especially female consumers who are often shown as sex objects in advertisements. With due respect, this Act fails to provide any protection to consumers.

#### **2.5 Reality of Internet in Kurdistan**

Generally speaking, Iraq is not developed in many scopes, such as commercial, civil, political, economic, social, cultural, or scientific activities since its establishment in 1925, especially in the scope of internet in consideration of being a new technology (Ismail, 2014). A key factor behind this was due to instability of the country in two main aspects, such as political and commercial situations that led to disturb both internal and external trades, and also leading to the destruction of communication infrastructure of the country (Faisal, 2005). However, this is an expected result for a

country that passes through same situation like Iraq. Internet in Kurdistan has been used in a very low level depending on static web sites that do not contain any buying or selling options (Faisal, 2005). The reason behind that was due to

1- Lack of communication infrastructure that led electronic commerce to be late in Iraq as whole (Sulaiman, 2006). Lack of content of Arabic and Kurdish languages on the internet, where there are no web sites in Arabic or Kurdish only few, and they provide little basic information (Motac, 2014).

2- Lack of amending commercial and economical legislations that treat electronic transactions (Ismail, 2014).

## **2.6 An Overview of Consumer Protection on Online in Kurdistan**

Recently, Kurdish consumers are suffering of many abuses of their rights caused by the lack of laws and regulations that protect types of commercial fraud and industrial brands fake taken deployed in the Kurdish market is extraordinary, as well as other violations of rights adopted by the United Nations in its resolution No. 348 / 3939 on 9<sup>th</sup> of April 1985, which are the right to information security, and owning and living in a healthy environment and the right of choice, education and compensation and the satisfaction of basic needs and other rights in the field of providing protection for the consumer (Maula, 2004). The central government of Iraq had started providing limited email subscription services to the public through the Ministry of Culture and Media around 1999 when the word was introduced to Iraq (Kadim & Al-Taie, 2013). Iraq is one of the very few countries in the world that are still so far from the real use of inevitable services of e-commerce (Abdullatif, 2001). Primarily, Iraq suffers a number of features that works barriers to an effective use of e-commerce, such as lack of awareness and understanding of the benefit of e-commerce, lack of

information and communication technologies (ICT) knowledge and skills, the unstable physical network infrastructure, security and problems related to costs for the adoption of a new technology (Motac, 2014). In 2004, Iraq has established new institute of communications in accordance to Order No. 65 issued by Coalition Provisional Authority (C.P.A.) under the name of "Iraqi Institute of Communications and Media" (IICM) (CPA, 2004). Internet in Kurdistan Region has been used officially since 2000, but it was limited only for providing few services, such as e-mail accounts, digital channels, and some social networks, and only for personal use through Kurdistan net Co. Ltd that established under Iraqi companies Act (Act No 21) 1997 and certified by Kurdistan Regional Government (KRG)-Ministry of Finance under the Order No 2424 in 2001 (Motac, 2014). According to one of the conducted surveys made by Iraqi Social Multimedia Network (ISMN) in 2012, the users of internet in Iraq in whole calculated by 1,300,000 out of 31,700,000 of the population of Iraq. In Kurdistan the users of internet is determined by 700,000 users only out of 7,000,000 of the population of Kurdistan (ISMN, 2012).

### **2.6.1 Protection under Iraqi Consumer Protection Act 2010 (Act 1)**

The new Iraqi parliament adopted a consumer protection Act 2010 (ICPA) .This Act is also applicable in Kurdistan. The Act provides principles that prohibit trade fraud and deception in dealing with goods or services. However, it is still not fully enforced because of the lack of implementation and due administration. Iraq is considered as an open area for black marketing since Saddam's fall (Kadim & Al-Taie, 2013). The ICPA 2010 in its article 9 constructs many prohibitions in order to promote consumer protection, such as the followings:

- 1- The practice of fraud and deception, fraud and hide the fact that the constituent materials to the approved specifications in all goods and services.
- 2- The use of force or objection with the inspection committees and representatives of official bodies animate the relationship and prevent them from carrying out their duties entrusted to them or impede in any way whatsoever.
- 3- The production, sale or display or advertising for Goods and services contrary to public order or public morals. Any items are not written on their covers or clock cases and clearly full components therefor, or warnings (if any) and the date of commencement and expiration.
- 4- Hide or change or remove or twist the expiry date.
- 5- The repackaging of products damaged or expired cans, different covers that carry the power of the truth and misleading to the consumer.

### **2.6.2 Protection under Iraqi Copyright Protection Act 1971 (Act 3)**

Basically, this Act is to protect copyright in Iraq and also it's applicable in Kurdistan. However, its coverage is limited to provide minimum protection. The Act has been amended in 2004 in efforts to provide greater protection of electronic publications. Nevertheless, these efforts did not fully achieved due to many reasons go behind politic situation, culture, education level, inadequate economic system, and monopoly of marketing by successive Iraqi government for politic purposes (Ahmad, 2014). Section 1 of the Act provides protection for authors of origin works, such as literature, arts and sciences. Moreover, section 2 states that the provided protection in this Act includes works expressed by writing, sound, drawing, photography or movement and in particular the followings:



1- Written works in all varieties, computer programmes, either source code or machine, which must be protected as compilations literary.

2- Works expressed orally such as lectures, lessons and speeches, sermons and the like works involved in the arts of drawing and painting lines or drilling or sculpture or architecture.

3- Works performed by movements or steps technical and intended mainly for output, maps, charts, scientific models, public recitation of the Holy Qur'an, dramatic works and musicals, musical works, whether or not accompanied by the words associated with them, audio recordings, data collection, film and photographic works, works intended for radio and television.

In addition, the Act allows consumers to use the content of original work and copy it if it is for first time and for personal needs. According to section 13 of the Act the author of original work cannot restrict any person from copying which states "If someone makes a copy of one published work for personal use, it is not permissible for the author to prevent him to do so". This section is opposite to section 8 because section 8 of this Act states that "the author of the original work only himself has a right to retain and use his work unless with permission". Therefore, this Act contains deficiency to protect the right of the author of origin work and vice versa to protect consumers, whether in online or offline transactions.

### **2.6.3 Protection under Iraqi Penal Code 1969 (Act 111)**

The Iraqi penal code 1969 IPC provides protection against trade fraud by imposing penalties under section 466, such as imprisonment for a term not exceeding one year and a fine not exceeding one hundred Iraqi Dinars (ID), or in one of these penalties on any person attempt to cause increasing or decreasing in the prices of commodities intended for trading or disappearance of commodities intended for consumption by announcing different facts, incorrect news, false claims or commit any other act involves fraud. Section 467 imposes penalties like imprisonment for a term not exceeding two years and a fine not exceeding two hundred dinars, or in one of these penalties on any person who attempt to cheat another person who was a party to the contract relating to the reality, nature, and essential description of any good. The Act in its sections 361, 362, and 363 imposes penalties on any one threatening, or attempting to threat commutation means with imprisonment for a term not less than one year but not exceeding seven years and a fine of not less than one hundred dinars but not more than two hundred dinars, or any of these penalties.

### **2.6.4 Protection under the Right of Information Act 2013 (Act 11)**

Basically, this Act is passed on 5<sup>th</sup> July 2013 by Kurdistan Regional Parliament in order to obtain governmental information easily, such as public documents, and general information about the daily administrative procedures done by Kurdistan Regional Government (KRG). The only protection that is provided by this act is in section 8 that "anyone can access through governmental formal websites and has a right of obtaining information electronically without any barriers hindering this right". However, this act does not cover the access to the confidential information, and if any the access will be considered as an offence.

### **2.6.5 Protection under the Abuse of Communication Means Act 2008 (Act 6)**

The Abuse of Communication Means Act 2008 (ACMA) has been enforced since 2008 by Kurdistan Regional Parliament in effort to prevent the abuse of using communication means, such as cell phones (mobile phones), internet and any other communication devices. This Act prevents the misapplication of communication devices by consumers, both against themselves and against others. The Act in its sections 2 and 3 levy many penalties on anyone abusing such devices for any reasons that are in criminal nature with imprisonment not less than three months but not exceeding five years and fine of not less than one million dinars but not more than five million dinars, or one of these penalties.

### **2.7 Essence of Internet**

Internet is a global network of various interconnected computer networks and, so that each of them is able to broadcast programmes simultaneously. The word "Online" means interrelated network consisting of computers, software and human crew that make up of service providers and consumers (Faisal, 2005). Internet could make each of different kinds of computers attached to the network directly, to walk paths on the road of ultra- informatics and availability of products and services across the planet (Badir, 2005). It is worth mentioning that the term is derived from the International Networks, which is a network of electronic computers allow users to communicate with each other all over the world and which is also subject to the Internet Protocol (Sulaiman, 2006). We must take into account, that the participant in these networks is the person who pays for Internet line, while the user is the person who might have used the Internet once (Ayob, 2006). There are multiple definitions of the Internet and it's difficult to find a specific definition because it is a network of multi-services

and dimensions that is not limited in scope. However, there is an agreement on which it is described as a network that enables computers to link to each other electronically across the world (Mughabgib, 2006). A Web site is a related collection of World Wide Web (WWW) files that includes a beginning file called a home page. A company or an individual tells you how to get to their Web site by giving you the address of their home page. From the home page, you can get to all the other pages on their site. For example, the Web site for IBM has the home page address of <http://www.ibm.com>. The home page address actually includes a specific file name like `index.html` but, as in IBM's case, when a standard default name is set up, users don't have to enter the file name. IBM's home page address leads to thousands of pages. (But a Web site can also be just a few pages.) (Kadim & Al-Taie, 2013). The idea of Internet had been started to display in the United States through a network created by the Pentagon in 1957 (Faisal, 2005). The purpose was to link all military sites together in order to get a secure means to move their information around the world, and to protect their nuclear information. In other words, it was one of the most important secretions of the Second World War, and the results of the Cold War between the United States and previous Soviet Union (Sulaiman, 2006). Internet has emerged into existence as a result of pure governmental project by the American in 1960 and achieved its final in 1965, under the name of Arpanet by Ministry of Defense in order to serve the U.S. military's rapid alert for fear of a nuclear attack by Soviet Union in the period of Cold War at that time (Faizullah, 2002). After the end of nuclear threaten due to the fragmentation of the Soviet Union, some corporate managers discovered the technological importance of Internet to increase their sales and profits and open new markets to improve their business (Badir, 2005). The first recorded description of the social interactions in the world that could be enabled

through networking was a series of memos written by J.C.R. Licklider of MIT in August 1962. The Internet Society was formed in 1992 by Vint Cerf and Bob Kahn, two of the "Fathers of the Internet". The use of Internet had been expanded due to discovery of electronic mail (e-mail) and World Wide Web (W.W.W) that is considered as a first step in carrying out transactions (Sulaiman, 2006). The military purpose of internet had ended to serve civil and commercial needs in the beginning of nineties (Badir, 2005).

### **2.7.1 International Dimensions of Internet**

After the discovery of both E-mail and World Wide Web (W.W.W), the use of internet has been expanded in the scope of marketing and providing consumers with products, information, and services in all fields of life (Sulaiman, 2006). Nowadays, Internet consists of 60000 networks all connected together, and more than 513.43 Million people using Internet around the world, where the purchasing transactions via online reached 327 Billion U.S. dollars in 2012 (Faisal, 2005). Moreover, there are more than 250 Million people using "Credit Cards" to buy from 7 Million service stations via online, that they spend about 600 Million U.S. dollars daily (Badir, 2005). Hence, internet has caused a great change in the global trading as telephone and fax did previously, where the participation of using Internet by Industrial and Commercial Companies increased about 70% to 80% for many reasons such as increasing the purchase of Personal Computers (PC) around the world, developing of the World Wide Web (W.W.W) and advertising for internet through various types of media (Mosa, 2007).

The use of internet is connected directly to the use of other telecommunication devices, such as smart phones, and I pads. For example, in advanced countries like

Japan, there are about half of population owning at least one telecommunication device like, 49.5 phones for each 100 persons in contrast to under developing countries such as, Iraq with 1.4 phones for each 100 persons, and the reason behind that is the lack of communication infrastructure (Kadim & Al-Taie, 2013). This reality leads to conclude an important result, that internet witnesses a giant and continuous developing in the number of consumers and businesses together. Therefore, internet has become a universal market as a meeting point for many companies in terms of; commercial, civil, social, political, and cultural activities (Ayob, 2006). The international dimension of internet in the world of e-commerce allows meeting consumer's demands according to universal market and its interactions, and this will be done between parties separated by boundaries and distances. Thus, internet can be characterized as a world of no boundaries (Badir, 2005). We must take into account, that the potential energy of internet allows many of businesses to innovate various types of services in order to sell their products beyond its national borders (Sulaiman, 2006). Furthermore, internet is considered as a network of many networks because it means the connectivity between multiple networks without any limit (Lorentz, 1996).

### **2.7.2 Internet Privacy**

The traditional theories of contract and its consequent obligations has become difficult to implement them in the world of internet, where the electronic median led to lack of consumer's confidence via e-commerce, and the evolution of technology plays a prominent role in its effects on the right of electronic consumer to privacy, and making him to request safety (Ayob, 2006). What was impossible in the past, becomes accessible now under the inevitable showdown between the consumer and his computer (Chellappa, 2007), and if the privacy of the information is the core of privacy, it is noted that the infringement of the right to privacy is almost becomes a feature of the digital age (Badir, 2005). For example, in the case of (eBay, INC v. Bidders Edge, INC.), the special bidders' site of e Bay Company had sued Bidders Edge Company because it obtained bidders data without permission of eBay by using special programmes, eBay stated that they had warned the said company that their access was an assault on a private property of information. The court held that the warning was a legal right of eBay and the claim accepted. If the infringement of the right to privacy is happening among the professionals that they have equal unlimited technical and electronic capabilities, so how the situations look like in case of average consumer? From the previous example, it can be concluded that the electronic boundaries will replace the geographical boundaries, so that the assault on electronic boundaries can be considered a wrongful action (Faisal, 2005).

### **2.7.3 Relationship between Information Technology and Law**

Generally, legal rules govern various human activities in order to regulate his social relations (Mosa, 2007). Information Technology (IT) is one of those phenomenal activities represented by knowledge transmission in many fields, such as technical, economical, and social activities (Abdulrahman, 1992). In this consideration, it could be said that a new law branch has been appeared into existence due to information revolutionary age (Younis, 2001). Information technology has vital effects on all branches of law, especially in transactions by forming new type of contracts called "electronic contracts" in the scope of electronic commerce, and created new forms of dealing electronically through using of credit cards that led to the creation of new forms of finance services through electronic banking (Lutfi, 1994). The reason that increased the importance of protecting consumers is the majority of constructing e-contracts have an international characterization because Internet provides commercial and communications channels that have taken over national borders easily (Sulaiman, 2006). Those contracts that conducted through Internet, consists of parties belonging to various countries. For example, an e-contract could cover a consumer from Malaysia as a first party, a provider of the internet from the USA as a second party, and a company of treating data through Internet as a third party. The Internationalization of transactions covers not only contracts, but also covers advertisement for goods, services, and use of intellectual property. (Salama, 2000).



## **2.8 Concept of E-Commerce**

Electronic commerce as a general concept consists of any form of business transaction in which the parties interact electronically rather than by physical exchanges or direct physical contract (Badir, 2005). Day by day, the number of companies and people engaged in e-commerce is increasing as a result of the significant benefits brought out by this type of commerce for consumers, businesses, and community (Jebur, 2012). The Electronic Data Interchange (EDI) is considered as an early stage of e-commerce development (Boss, 2005). In 1960s a collaborative effort between industry groups generated the first attempt to develop common formats for electronic data interchange (EDI), which was only for purchase, transport, and finance (Sengupta, 2005). In the late 1970s, global standards for electronic data interchange have been set, and then it is been well developed in early 1990 to integrate information among large organization parts, so all business parties can share information (Akdeniz, 2000). Electronic Data Interchange was limited because it was conducted over a private and costly network, and first business transactions via online were conducted in the USA in 1994 (Feigenbaum, 2009).

### **2.8.1 Legal Framework of E-Commerce**

As previously mentioned, that electronic commerce has an internationalization character as many arguments around the concept of e-commerce and its dimensions appeared into existence (Badir, 2005). This character has led to rise up many questions about the possibilities of protecting consumers and the legal framework of this protection, and do the classical rules of obligation theory adequate with the electronic creation of contract? (Mujahid, 2000). It is normal matter that internet is categorized as a private environment of creating e-contracts. Hence, how can classical rules fitted in this privacy? (Ayob, 2006).

The need of legal protection for consumers is required, that electronic contract consists of meeting between an offer expressed by a service provider through internet, and an acceptance will be expressed by interacted dialogue between a consumer and information provided by a machine (Sulaiman, 2006). Despite the potential benefits of electronic commerce, there are doubts and risks collapse consumer confidence, where traders through internet can put themselves outside the jurisdiction of national courts of consumers, that increasingly exposed to unfair shopping, and at the same time the products presented to them are unsafe, as well as payment methods are unreliable (Abdullatif, 2001).

Proven facts from the perspective of official reports showed that one out of every five members in society has a problem in buying online and the reason for this is due to the laws that govern the use of internet are still ambiguous, and sometimes non-existent (Abdulrahman, 1992). On the other hand, consumers cannot get compensation for the damage caused by problems of electronic market, and if the consumer is an essential norm for legal protection, it is important to develop and organize legal means of this protection (Gao, 2014).

### **2.8.2 Types of E-Commerce Market Models**

Usually, we can identify six major types of e-commerce market models such as following:

1- Business-to-Consumer (B2C): It is commerce between companies and consumers, involves customers gathering information; purchasing physical goods like books or travel or information goods like downloadable digitized material content, such as software, music or electronic books (Badir, 2005).

2- Business-to-Business (B2B): This type involves the use of e-commerce in between and among businesses. B2B area is nowadays growing much faster than B2C and about 80% of the e-commerce is of this type (Kadim & Al-Taie, 2013).

3- Consumer-to-Consumer (C2C): This type of e-commerce occurs between private individuals or consumers (examples include eBay.com) (Sulaiman, 2006).

4- Business-to-Government (B2G): This type involves commerce between companies and the public sector. Examples include the use of the Internet for licensing procedures, public procurement, and other government-related operations (Faisal, 2005).

5- Mobile Commerce (m-commerce) or M-C: This is defined as a process of buying and selling of goods or services through wireless methods by using of smart phones (Jebur, 2012).

6- Government to Government (G2G): This category is noncommercial, but it has more usage for administrative activities between governmental institutes locally in doing their daily works or between governments internationally depending on well-established basis of Electronic Government (EG). However, it could be used for International commercial purposes between governments, especially in confidential transactions, and top vital projects (Ismail, 2014).

## **2.9 Essence of E-Transactions**

Electronic Transactions, which have traditionally been renamed e-commerce contracts, are those transactions that are made between dealers through the use of different electronic devices (Faisal, 2005). These transactions achieve many advantages for all parties to transaction as follows:

- 1- Speeding communications, especially in international dealing (Abdullatif, 2001).
- 2- Enhancing performance, thus there is no need to re-enter data, and consequently there will be no mistakes in the saved data of customers in electronic commerce (Sulaiman, 2006).
- 3- Low costs, where the electronic data interchange largely leads to dispense of the existence of the stores and, reduces the buying and selling cycles significantly (Badir, 2005).
- 4- Ensuring close relationship between customers and suppliers, where e-commerce sites are always updated (Up to Date) on the internet which makes customers and suppliers are aware of any immediate changes occur in the markets (Hijazi, 2006).
- 5- Quick and easy way to get information about a particular company, its products, and its commercial position internally and externally (Gao, 2014).

The historical evolution of electronic transactions extends to the date of founding of the internet in the United States in 1969 where it used for purely military purposes (Badir, 2005) . This type of transactions is newly formed because it is inherent to the technological development of communications media internationally, and did not appear to the existence in its current form at that time, where it's real appearing was in 1995 after the development of internet technology in the world and harnessed for civil and commercial purposes (Ayob, 2006). Electronic transactions have been used broadly in the United States and other advanced industrial countries, while internet

services did not reach to third world countries only after 1995 (Sulaiman, 2006). Thus, the legal structure of under developing countries considering civil and commercial laws do not contain exact rules of regulating these kinds of transactions due to its modernity and its connectivity to the development of internet technology in the world (Faisal, 2005). What concerns the study here is a return to Iraqi civil and commercial laws, which are also applicable in Kurdistan Region, that the Iraqi legislature did not regulate these types of transactions via online, and he remained on the traditional concept of contracts as a source of the Theory of Obligations (Kadim & Al-Taie, 2013).

### **2.9.1 Types of Online Transactions**

In the world of electronic transactions, there are three main categories of transactions such as the followings:

1- Shrink wrap contract: This type of transactions considered to be concluded when the purchased product is received, it comes with additional terms and conditions in the packaging or in the accompanying documentation (when purchasing off-the-shelf software, for example) (Boss, 2005).

2- Click-wrap agreement: This type of transaction will be made at or before the time of purchase on a web site. The purchaser is required to click "I agree" before the transaction will continue, the installation will proceed or the user will gain access to the web site (Maxeiner, 2003).

3- Browse wrap transaction: In this transaction the user can visit the pages of a web site and in somewhere on the web site, terms and conditions are posted that aimed to bind anyone who uses the web site or its services (Bates, 2002).

The first type of transaction (the shrink wrap) actually has been existed in a paper environment for some time and, the other two types of transactions (click wrap and browse wrap) are exclusive to electronic commerce (Tassabehji, 2003). These types of transactions could result in fundamental questions especially about assent. There are issues about treating terms that are not disclosed until after the user has already agreed on (Boss, 2005). There are also issues relating to disclosure whether there was assent, when was it established, is it only for terms that the user had knowledge, or does it extend to terms and conditions which the user had not read or understood (Braucher, 2000). It is quite difficult for businesses to determine with certainty at the beginning of the transaction whether the specific terms in any of these types of agreements would be enforceable. Some countries address these types of issues within the category of consumer protection. For example, the US has initially classified these types of issues under the conception of assent (Kunz, 2003). The difficulty with shrink wrap contracts is that the terms are not made available to the consumer until after payment is made (Boss, 2005). Another method of obtaining assent for online transaction is click wrap. After selecting a product to purchase, the internet user realizes the contract terms on the computer screen and cannot complete the purchase without clicking a box on the screen to express assent. Therefore, click wrap agreements are less controversial than the shrink wrap agreement. The last type of online transactions is the browse wrap agreement. When using this method, the vendor of internet gives the consumer a chance to look at the terms of the sale, but does not require him/her to click on anything to show the acceptance to these terms before paying for the product or the service. For example, the web site may contain a button stating "click here for legal terms" that the consumer may click or ignore (Braucher, 2000).

### **2.9.2 Relationship between Classical and Electronic Transactions**

It is well known, that traditional transaction is conformity of two or more willingness's to create legal implications, whether these implications were for creating an obligation, transferring an obligation, modifying an obligation, or terminating an obligation (Sulaiman, 2006). Section (73) of Iraqi Civil Code 1951 defines contract as a link between an offer expressed by one of contracting parties and an acceptance of the other. It is clear from the definition, that contract must consist of two wills, and must be expressed, whether orally or expressly (Albikri, 1980). The law did not require a special appearance or a particular form to express wills, except in rare conditions. The general rule is that the expression is not subject to a particular form, and this is the principle of consensual in contracting (Lutfi, 1994). As for electronic transaction, the expression of the will, whether offer or acceptance, and whether it is expressly or impliedly does not differ from traditional transaction, the only difference lies down in the way of expressing the will, that the use of mouth words, writing, or understood body language are applicable, whereas in electronic transaction the expression will be done by a computer linked to the internet (Abdulrahman, 1992). Companies that offer their products via online is an explicit expression for creating legal relation that called invitation to treat (Aziz, 2013), as well as called Electronic Offer (EO) that must meet the acceptance of consumers who use Internet which is called Electronic Acceptance (EA) (Badir, 2005).

## **2.10 Creating an E-Transaction**

As previously mentioned that the classical rules of contracts could be applicable on those transactions of electronic concept, this paragraph will propose the creation of electronic transactions by explaining both e-offer, and e-acceptance as follows:

### **2.10.1 Electronic Offer**

In principle, there are no differences between classical and electronic offers as long as the offeror intent to make a serious legal effect (Sulaiman, 2006). However, this offer raises a number of problems because of the seriousness of its implications that the consumer is not able to afford them, that as soon as he clicks on the icon "I agree" means that the electronic contract is established which requires a protection even from himself as a consumer (Badir, 2005). These problems can be discussed at two levels, firstly is a problem of entering into an electronic offer, and secondly is related to the content of the offer which imposes the need to define legal framework for this offer and down to its privacy. On the other hand an advertisement for a product could become an offer, if it's fulfill the terms of offer, and if a commercial site on the Internet is anonymous, the company has an obligation to determine its character for the purpose of enlighten the consumer (Faisal, 2005).



### **2.10.2 Problems of Entering into an Electronic Offer**

Ostensibly the development of information and communication technology allows many options towards consumers, while impliedly there is no real choice for the consumer that doing everything online, where the consumer be harmed because of the power of the market and what information imposes about products or services, and it is hard for him to recover appropriate and accurate information among billions of available documents via online (Ayob, 2006). Additionally, electronic transaction is full of risks, which are due to two reasons; lack of informational enlightenment for consumer and difficult to verify the identity of the company, which imposes an essential obligation on the offeror to guide the consumer (Badir, 2005).

### **2.10.3 Difficulties of Verifying the Identity of Business**

On one hand as previously mentioned that electronic transaction is a remote contract. Therefore, there is no physical presence between consumer and business because the process of electronic transaction is between absentees that they do not recognize each other (Badir, 2005). On the other hand, synchronize and contemporary of the contract cannot be uttered by an electronic device, where the consumer does not deal directly with business, but with several mediators per website of that business (Faisal, 2005). This will bring into question about the proposed electronic offer of a product that the consumer does not satisfy with the identity of the business, as well as the consumer cannot be able to differentiate between fake website and real website whether they are trade, scientific, or educational websites (Sulaiman, 2006). This is all caused by lack of knowing the name, eligibility, and place of the business, which leads the consumer to not be relied on the online transactions because he will not be able to

recognize which party should be sued and which court is jurisdiction to see cases in terms of disputes (Ayob, 2006).

#### **2.10.4 Lack of Consumer's Informational Enlightenment**

As the consumer is a weaker party in the contractual relationship and requires informational enlightenment (Kaviar, 2011). This study sees that it should adopt a legal system to verify the identity of the parties to the contract by activating the clues that must be prescribed by law, such as logo of the company or trademark that distinguishes the selling itself. Therefore, the general terms and conditions of the traditional contract could be applicable in the case of e-commerce, such as price, time of delivery, time of receive, and trade warranties. The followings could be inserted to e-transaction as essential information:

- 1- Product Description: The business must prescribe products or services accurately.
- 2- Business Identity: In the range of trust and good faith, the business must aware the consumer about all the data that define his identity conclusively.
- 3- Validity of the offer: As a general rule according to the traditional theory of obligation stated by section 4 of Contracts Act 1950 of Malaysia, the offer is not enforceable without acceptance. Therefore, the offeror can revoke his offer as long as the revocation is communicated to the offeree before the offeree accepts. However, there are no hinders to keep his offer open to the consumer by the time concluded expressly in the contract or by trade customs.

### **2.10.5 Electronic Acceptance**

Should not be an acceptance just a click on the mouse button or pressing the "enter" button on the keyboard that the consumer agreed with terms of the e-contract. There is no excuse that consumers are accustomed to computers where they insist on pressing approval buttons before being asked of providing goods or services (Ayob, 2006). Therefore, we should emphasize the legal framework of electronic acceptance of its issuance, which ensures all free willingness's, even if the writing is necessary formality to affirm the principle of consensual with the authorization of the consumer's right to revoke certain period of time (Abdullatif, 2001). Thus, it can be said that the offer is an absolute expression of the will of a party received an offer from another party in order to configure a legal relationship. This concept is consistent with the electronic acceptance. However, the differences between traditional and electronic acceptance are as follows (Hijazi, 2006):

- 1- The traditional acceptance should be impliedly or expressly constructed while e-acceptance must be wide expressly only.
- 2- E-acceptance conducting through the internet but traditional acceptance is not.

### **2.10.6 Right of Revocation**

Traditionally, the consumer's right to revoke the contract means restoring the situation to what it was before contracting, and the consumer may revoke the product received by him if there is a reasonable cause (Badir, 2005). According to section 5 (1) of the contract Act 1950 of Malaysia, an acceptance may be revoked at any time before the communication of the acceptance is complete as against acceptor, but not afterwards. However, in the course of online transactions neither Malaysian nor Kurdish legislations were addressed to determine consumer's right to revoke electronically.

### **2.10.7 Necessity of Writing**

The need of formality of transactions in electronic commerce is essential in order to provide greater protection electronically and to confirm the satisfaction to the conditions of the contract (Faisal, 2005). In this regard, the offer issued by the business must be in writing, clear manner and without ambiguity because the digital information is temporary and short-lived (Sulaiman, 2006). According to section 5 of European Decree 1997 on the consumer protection in the field of e-commerce, permitted consumers the right to receive information by writing or reaching him by e-mail, where it is more stable. This should be done in a timely manner when implementing the contract and until the moment of delivering the product or service.

## **2.11 Legal Remedies for Consumers Protection**

As previously mentioned that the consumer is considered as a weaker party to the transaction, it is necessary to mention some of legal remedies that give the consumer absolute confidence to conduct electronic transactions. In June 2000, the Electronic Commerce Group (ECG) which consists of leading companies in electronic commerce industries has taken an action by issuing guidelines for Business to Consumer transactions (B2C) in order to provide consumer confidence in electronic commerce (Boss, 2005). The following issues addressed in their guidelines are worth mentioning and could be considered as greater remedies for consumers on online transactions:

- 1- Accessibility of Information: All information should be clear, correct, and easily accessible online.
- 2- Trader Contact Information: Consumers should have a quick, easy, and effective means of contacting the trader. The company should disclose its legal name; the name under which it conducts business, mail, e-mail or telephone contact information and a point of contact within the merchant's organization that is responsible for inquiries from consumers.
- 3- Marketing Practices: Merchants should not engage in any practice that is dishonest, misleading or fraudulent.
- 4- Disclosure: Merchants should clearly disclose about ; basic features of the goods or services, terms and conditions applicable to the transactions, price, type of current expected costs, shipping and payment terms, cancellation, return, refund policies, customer support available, and warranty.

5- Opportunity to Review: Merchants should provide consumers a chance to review and not proceed with the transaction prior to its becoming a binding obligation and he should disclose to consumers at what point the transaction will be final.

6- Language: An adequate language should be used.

7- Transaction Recording: Merchants should make it possible for consumers to access and maintain an adequate record about their transactions.

8- Security: Merchants should make reasonable efforts to ensure the security of a consumer's transaction, using security protections consistent with current industry standards.

9- Privacy: Merchants should adopt privacy policies that are consistent with existing industry standards and existing legal requirements.

10- Self-regulatory Programme: Merchants should disclose and provide contact information for any self-regulatory programmes in which they participate and applicable dispute resolution processes.

11- Dispute Resolution: Merchants should provide consumers with fair, timely, and reasonable methods to resolve disputes.

12- Effective Enforcement: Merchants should contribute in effective self-regulatory enforcement programmes to provide proof that merchants obey to these or equivalent guidelines.

## **2.12 Summary**

In summary, and based on the explanation given by the elements of this chapter, the study conducted critical review of plentiful previous related studies in order to indicate the advantageous and disadvantageous of each revision that gave better improvement to the study. Additionally, the chapter covered concepts relating to e-commerce by giving short historical background of internet and its reality in both Malaysia and Kurdistan. In this concern, this chapter dealt with an overview of both Malaysian and Kurdish context in terms of consumer protection on online transactions. The chapter has also mentioned the creation of e-transactions by explaining its forms, types of online transactions, relationship between information technology and law, and some legal remedies of consumer protection within applicable law and relevant court in the event of disputes in the field of e-commerce. However, it is not easy to determine and enforce adequate laws to protect consumers from the consequences of electronic transactions because many difficulties, such as difficulties of verifying the identity of business and lack of consumer's informational enlightenment. Further steps, the chapter has adopted some legal remedies for consumers when they deal with e-commerce.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

The purpose of this study is to examine each existing Malaysian and Kurdish laws and regulations relating to consumer protection on online transactions. Besides that, Kurdistan Regional Government (KRG) has an intention for implementing new law experiences into their legal system, such as Malaysian context in terms of electronic commerce in order to enhance the levels of protections for Kurdish consumers on online in the future as this issue is quite new in the field of marketing in Kurdistan (Motac, 2014). According to (Sanati, 2005), Kurdistan has been isolated from the global online trading which influences the economic growth and development and that there are still uncertainties in the importance of e-commerce among Kurdish consumers. The benefits and use of internet in Kurdistan has not been realized in full due to lack of communication infrastructure and lack of information technology (Ahmad, 2014). Therefore, this chapter attempts to determine the research methodology of this study, describing the procedures used in collecting the data, and explaining the technique of data analysis.



### **3.2 Research Design**

The issue of online transactions which explained previously in this study is somehow new in Kurdistan (Ahmad, 2014), and only 10% of Kurdish consumers conducting transactions electronically (Rudaw, 2014). We shall keep in mind that the facts of Kurdish electronic environment are not much developed as Malaysian. This goes behind the lack of adequate communication infrastructure, lack of recognition to the electronic documents, and lack of laws determining consumer protections on online transactions in Kurdish context (Sulaiman, 2006). However, the issue of consumer protection on online transactions is characterized as a legal issue in nature. It is therefore, significant to use qualitative approach rather than quantitative approach. In this concern, the study relied on two kinds of methods to analyze the data. Firstly, a comparison has been made between both Malaysian and Kurdish contexts to show similarities and differences in the law of internet because the both are applying different legal system. Secondly, a descriptive analysis research methodology was used for this study to describe and analyze some realities of using internet and applying e-commerce in Malaysia and Kurdistan, as well as dealing specifically with consumer protection on online transactions in Kurdistan, and the possibility of getting benefits from the Malaysian experiences in order to achieve the aims of this study.

Generally speaking, the aim of any descriptive study is to find out facts and describe some realities (Yaqin, 2007). In fact, in various studies designed for gathering information, descriptive research is the primary goal (Sullivan, 2001). The expression "Personal Interview" is commonly applied to a research methodology designed to collect data from a specific population or an organization (Yaqin, 2007).

### **3.3 Population and Sampling**

For the purpose of data collection in this study, three specific governmental organizations selected for the formal interview identified by the IT department in Council of Ministers of Kurdistan Regional Government (KRG), Ministry of Transportation and Communication, and Salah Uddin University in Kurdistan-Erbil. The formal interview involved a list of panelists from the said organizations categorized by panel of experts, including general directors, legal advisors, lecturers, technical assistants, and engineers.

Furthermore, another informal interview is conducted in this study involved a group of respondent from two non-governmental organizations identified by Korek Telecom and Newroz Telecom for providing internet services in Kurdistan. Unfortunately, the selected respondents from Korek Telecom were only able to answer the questions of the informal interview while the management department of Newroz Telecom rejected the interview because of the issue of confidentiality of the information.

In addition, this study has also informally interviewed random aggrieve consumers among professional academic population in Kurdistan whom faced serious trade fraud on the issue of online transactions. The informal interview involved a group of 10 persons identified by lawyers, engineers, geologists, teachers, journalists and accountants.

### **3.4 Instrumentation**

An unstructured interview used in this study addressed three purposes. The first purpose is to examine both Malaysian and Kurdish contexts by describing related laws and regulations to consumer protection on online transactions. The second purpose is to collect more available data requested by Council of Ministers of Kurdistan Regional Government (KRG) but not utilized in this study in order to improve the legal system of Kurdistan in terms of consumer protection electronically. While the third purpose was due to an intention of Kurdistan Regional Government (KRG) to apply Malaysian experiences in dealing with online transactions into the legal system of Kurdistan. Thus, an unstructured interview was managed for collecting data from governmental and non-governmental organizations in Kurdistan. Additionally, this study has conducted an extra informal interview with those people whom faced trade fraud on online transaction in Kurdistan in order to get true data and make them the foundation of the study. However, the far distance between Malaysia and Kurdistan and the confidentiality of the information made the procedures of the data collection quite hard. The significance of unstructured interview is to collect information on issues that the researcher could be able to formulate ideas about those factors and variables that need deep investigation (Sekaran, 1992). Interview is an important tool for collecting and analyzing information from selected group of organizations. It is widely accepted as a key tool for conducting and applying legal research methodology especially if the subject matter of a study is of a general theoretical nature, or it involves social problem or issue (such as consumer protection on online transactions as an example) (Yaqin, 2007). Kurdish community is familiar with the use of interview as a good method to assess issues and problems (Barbarani, 2013). Kurdistan as a newly developing

region is in lack of legal resources in terms of consumer protection on online transactions (Ismail, 2014). This goes behind many reasons, such as lack of communication infrastructure, lack of confidence to e-commerce, and lack of using English language to access websites. For the previous reasons, this study prefers a descriptive research methodology and relies on an interview in order to collect data from the governmental organizations and analyze them regarding consumer protection, online transactions, recognition of e-documents and internet services in order to create safe electronic environment for consumers throughout Kurdistan.

### **3.5 Procedures of Data Collection**

This study selected each of Council of Ministers of KRG, Ministry of Transportation and Communication, and Salah Uddin University in Kurdistan-Erbil for the purpose of collecting data. Interviews were conducted in December 2013 by the researcher considering principles of interview stated by Anwarul Yaqin (Yaqin, 2007). The researcher interviewed a panel of experts, including general directors, legal advisors, lecturers, technical assistants, and engineers to respond to the proposed questions in chapter one of this study. It was quite difficult to collect required data from three different governmental organizations in Kurdistan because of the issue of information confidentiality. For this reason, the researcher was careful to avoid constructing a complex and lengthy interview. An informal extra face to face interview was conducted for the data collection by selecting panelist from non-governmental organizations in Kurdistan identified by Korek Telecom and Newroz Telecom companies of providing telephones and internet services. Unfortunately, while conducting this additional data collection, the study has faced difficulties in interviewing the selected panelist from Newroz Telecom, complaining the

confidentiality of information whereas; Korek Telecom provided necessary information required by this study. The selected panelist from Korek Telecom was included a group of; experts, technical supervisors, managers, directors, administrative staffs, legal staffs, and team leaders. Each respondent from the selected panelist was asked the following questions accordingly:

- 1- How much are you confidence with the internet services in Kurdistan?
- 2- Do you usually purchase online?
- 3- Have you ever been faced trade fraud while conducting e-transactions?
- 4- Does the company commit trade fraud?
- 5- What are the legal claims faced by the company?

Another informal interview conducted, which is consider as extra data. The interview involved random aggrieve persons whom faced trade fraud through conducting online transactions in Kurdistan. Initially, an introduction given by the researcher to them involved the purpose and aim of the study. The interview consists of three questions involving information about the internet services, usage of online transactions, and the issue of trade fraud. The purpose of this interview was to show the amount and the types of trade fraud faced by Kurdish consumers during the application of online transactions. This interview made into two parts. Firstly, some aggrieves interviewed by phone. Secondly, some of them have been asked through e-mail. For this reason, the study selected only 10 consumers faced serious trade fraud. Therefore, the following questions were consequently asked each aggrieve:

- 1- How much are you confidence with the internet services in Kurdistan?
- 2- Do you usually purchase online?
- 3- Have you ever been faced trade fraud while conducting e-transactions?

However, those selected consumers did not receive compensations for their being cheated while conducting such transactions because as previously mentioned in this study, a specific organization for reporting cases involving trade fraud electronically in Kurdistan is absence.

### **3.6 Technique of Data Analysis**

The data analysis consisted of examining the answers given by the panelists of the interview in concern of consumer protection on online transactions in Kurdistan. Therefore, two methods used for analyzing the data. Firstly, a comparison conducted between Malaysian and Kurdish internet laws and a detailed explanation was given critically to both Malaysian and Kurdish context to indicate strangeness and weakness points of both in terms of e-commerce in order to choose best points to provide greatest protection for Kurdish consumers. In this concern, the study has covered specific provisions of available statutes of Malaysia in terms of consumer protection on online transactions, such as CPA 1999, Penal Code 1936, ECA 2006, Contracts Act 1950, and TDA 1972, and other related statutes mentioned in previous chapter of this study. The study has also covered many specific provisions of available statutes of Kurdistan, such as the abuse of communication means Act 2008, and the right of information Act 2013, as well as Iraqi consumer protection Act 2010, and Iraqi penal code 1969. Secondly, the study provides an explanation of the given answers by the selected group of panelists involved throughout the procedures of the data collection.

### **3.7 Summary**

In summary, the purpose of this chapter is to describe the research methodology of this study and indicating the instrumentation used for collecting data. Therefore, two different versions of methods adopted in this study to analyze the data , a comparison approach and descriptive approach in dealing with Malaysian and Kurdish contexts in terms of consumer protection on online transactions in order to show weak and strong points of both said contexts. For this reason, the study constructed formal and informal interviews involved three sets of questions asked each selected panelist properly from governmental, non-governmental organizations and a number of aggrieve consumers whom faced serious trade fraud while conducting online transactions in Kurdistan. Finally, a description was given to the procedure used in collecting the data, and providing method of analysis or (technique of the data analysis).

## **CHAPTER FOUR**

### **FINDINGS AND ANALYSIS**

#### **4.1 Introduction**

This chapter descriptively presents the analysis of data followed by a discussion of the research findings from the conducted interview. The findings relate to the research questions that guided the study in chapter one and another extra data were collected from those aggrieved consumers whom faced trade fraud in Kurdistan. Data were analyzed to identify, describe and explore the challenges and issues that will be faced in e-transactions or internet law in Kurdistan, the scope of using internet in Kurdistan relating to commerce transactions, initial attempts taken by Kurdistan Regional Government (KRG) for establishing new laws and regulations related to consumer protection via online, and the possibilities of applying Malaysian context into the local legal system of Kurdistan Region in terms of consumer protection on online transactions as well. The findings are divided into two sections. The first section deals with the findings and analysis of the collected data from the conducted interview (unstructured interview) or (face to face interview). The second section presents a summary of the results and the findings.



## **4.2 Findings of the Formal Interview**

1- Each panelist of the formal interview was first asked "What are the challenges and issues that will be faced in e-transactions or internet law in Kurdistan?" consumer protection will be the major issue facing online transactions in Kurdistan replied Mr. Azad Ismail Ahmed technical assistant of directorial general in department of information technology of Council of Ministers KRG. While Dr. Amanj Rahim legal consultant in Council of Ministers said that the first issue to be solved by law makers in Kurdistan is the recognition of e-documents in order to solve the consequence issue of consumer protection.

2- The same answer above was given by each of Miss. Payman Haurldin a senior legal advisor in Ministry of Transportation and Communication (MOTAC), and Dr. Azad Shukor a senior lecturer of commercial law in Salah Uddin University under College of Law and Politic, Faculty of law. Later on each panelist selected from Ministry of Transportation and Communication (MOTAC) was second asked "What is the scope of using Internet in Iraqi Kurdistan Region relating to commerce transactions?" Mr. Karwan Raza Ahmed a general director of General Directorate of Communication said that the use of internet in Kurdistan is widely conducted by the use of well-known social networks, such as Facebook, and e-mail account especially among yang people while the use of internet in terms of online transactions is limited among few professional traders represented by 10% of the population of Kurdistan (Rudaw, 2014). According to Mr. Azad Majeed Osman an Assistant General Manager of Communication, the scope of using internet in Kurdistan is related to the communication infrastructure by saying that Kurdish Consumers are hardly can access to the internet because of the technical issues facing internet in Kurdistan,

such as lack of fiber optic providers, and lack of internet domain. However, the scope of using internet in commerce is also limited among few traders.

3- Similar answers were given by Mr. Nisan Shino a director of telecommunication department in Ministry of Transportations and Communications of Kurdistan, Mr. Zebar Atroshi head of internet companies department in MOTAC, and Mr. Samer Yaseen Noori a senior engineer in charge engineer of internet frequency department in MOTAC.

4- "Are there any initial attempts taken by Kurdistan Regional Government (KRG) for establishing new laws and regulations related to consumer protection via online?" another question was asked each panelist of Council of Ministers of KRG and Salah Uddin University. In this concern, Dr. Amanj Rahim replied that the Kurdish Parliament had issued two important Acts as an initial legal step to provide protections for Kurdish consumers, such as the abuse of communication means Act 2008, and the right of information Act 2013, as well as Iraqi consumer protection Act 2010 is applicable in Kurdistan. Nonetheless, they might not be best laws to provide protection for Kurdish consumers on online transactions but they are still remaining as available laws practiced in Kurdistan. Another point of view given by Dr. Azad Shukor that to establish new laws relating to consumer protection on online transactions in the scope of e-commerce, Kurdistan Regional Government (KRG) needs to establish good communication infrastructure in first step and to get benefit from other developed countries that have strong legal system not only in the space of consumer protection electronically but also covering other issues.

5- At the end of the formal interview, the panelists of the interview were asked "Is there any possibility of applying Malaysian context into the local legal system of Kurdistan Region in terms of consumer protection on online transactions?" each of

Dr. Amanj Rahim, Mr. Karwan Raza Ahmed, and Dr. Azad Shukor answered delightfully that Kurdistan Regional Government always support new ideas and experiences of other countries in order to get benefit from their experiences especially in the scope of law. Furthermore, Dr. Azad Shukor added that despite of the differences between both legal systems that Malaysia conducting common law and Kurdistan is following civil law, it is as Muslim country shares common features adequate with Kurdish environment and could be beneficial in implementing new laws of consumer protection on online transactions. Answers of mentioned panelists were collected and analyzed. The questions of the interview were also reviewed and approved by the department of information technology (ITD) in Council of Ministers of KRG.

#### **4.3 Findings of Informal Interview**

1- In the beginning of the informal interview of another group of panelists identified by Korek Telecom for internet and telecommunication services , Mr. Akam Yaseen manager of cell planning at Korek Telecom replied that Kurdistan has faced rapid improvement of internet services since 2013 because of increasing investment in communication sector, the increasing of internet provider companies and the development of new internet technology in Kurdistan had led to enhance the quality and speeding up internet services. Despite of these advanced in telecommunication, still internet in Kurdistan not realized in full especially in suburban areas. Personally, he added that the use of internet for doing electronic transactions is poor and limited among few professional traders because of poor of electronic banking system, poor in using English language and the use of credit cards is not common in Kurdish society. Therefore, the issue of trade fraud is absent, thus he thinks that conducting

transaction through internet is much better and safer rather than using traditional way because many websites on the global network provide various promotions and options to the consumers and they will be able to choose the best. Moreover, he replied indirectly that the company has committed trade fraud especially when it offers promotions. For instance, a Kurdish consumer receives an advertisement of the said promotion that his account will be reloaded for two months internet service for free if he paid 10.000 ID for one month. In fact it is only for one month service. Furthermore, he said that there are no obvious legal claims facing the company. Nevertheless, the only legal claim faced recently by the company is the problem of bill paying when a consumer does not pay the monthly price. The usual action will be taken by the company is cutting the services or stopping the phone line if the internet was provided through Korek cells.

2- Another respondent, Mr. Aras Wahid supervisor of billing said that the internet services are not much comfortable and the Kurdish consumer is not confidence with such service because of the low in speed. Moreover, he referred that this uncomfortableness is due the lack of an adequate communication infrastructure and the reason behind this is that Kurdistan Regional Government (KRG) had privatized the communication sector to many local and foreign internet provider companies and their aims are only maximizing their profits. On the issue of using internet for purchasing, he replied that the use of e-transactions is very seldom in Kurdish community because of many aspects, such as low internet speed, language issue, poor in IT education, security, quality, and the most important aspect is trust. Therefore, Kurdish consumers merely use electronic transactions because there is no legal protection whether locally or internationally. Hence, trade fraud will be an expectable issue arises from conducting e-transactions if it is conducted regularly.

However, he did not face such issue because of his seldom use of internet. Moreover, he thinks that trade fraud depends on the reputation of any company whether providing goods or services. In this case, Korek did not commit any trade fraud because he thinks that this company is the only honest company in Kurdistan providing communication services. Furthermore, he added that Korek gives Kurdish consumers many promotions every month, such as decreasing the prices.

3- In contrast with the given answers above, both of Mr. Himn Tahir an administrator and Mr. Awni Asmar Hassan a legal director of the company said that Kurdish consumers are not satisfied with the communication services provided by Korek because of the quality and speed issues, they added that all internet provider companies in Kurdistan are only aiming their benefits and charging the Kurdish consumers with high prices. Additionally, they think that conducting electronic transactions in Kurdistan will be a great improvement for Kurdish consumers because internet provides many advantageous, such as shortening time, speeding transactions, and decreasing efforts. They also added that the use of internet for purchasing is seldom in Kurdistan because of language issue, IT education, and the poor services of electronic banking system to provide credit cards. It is therefore, government's responsibility to improve banking system in Kurdistan. Moreover, they added that not only Korek as communication services provider company commit trade fraud but also many companies in various sectors especially when they advertise for their products, goods, and services through internet or any other methods of advertisement. For example, one of the car companies in Kurdistan named Chihan Cars Co. Ltd advertises for Japanese products technology. However, the descriptions do not meet the quality standards. Finally, on the issue of legal claims, they said that the problem is that there are no records for facing legal claims

in Kurdistan. It is not only related to Korek but also related to all companies in various sectors in the region as whole. They also related this problem to the inactiveness of the judiciary authority in Kurdistan saying that there is no special institute to record cases relating to this subject.

4- In a different manner, both of Mr. Nezam Abdulla a manager of operation and Mr. Saadi Khalid a team leader of transmission at Korek Telecom said that internet services are flexible but it is still not realized in full. Similarly, they stated that the use of e-transaction is seldom in Kurdistan because lack of speaking English language and it requires electronic payment through credit cards and such system in Kurdistan is poor and it is limited among few professional traders. Besides, the prices of issuing credit cards are quit high. Furthermore, the issue of trade fraud nowadays is obvious in Kurdistan because of poor control of the government to reduce this phenomenon and there are no much laws to provide legal treatments for protecting Kurdish consumer from being cheated electronically. At the end, they did not comment on the behavior of Korek Telecom because of the confidentiality of information.

5- Other respondents, Mr. Rezgar Akrawi a director of technical staff and Mr. Saman Akrawi a manager of complaints at Korek Telecom said that the internet services in Kurdistan are not confidence because of low speed and poor quality. The use of e-transactions in Kurdistan is limited among a few populations of consumers and the reason is because of IT education, language issue, and the lack of delivery system of goods and services. Moreover, because of poor dealing with electronic transactions, there is no obvious trade fraud and if any, there is no real statistic to show that. Finally, no comments were given by them on the issues of; legal claims facing by Korek, and committing trade fraud because of the confidentiality of information.

6- In another occasion, each of Mr. Rezgar Mohammed a senior supervisor, Mr. Seerwan Ali a senior supervisor, and Mr. Shoresh Iranpanah an expert at Korek said that the internet services are quite confidence in Kurdistan. However, it's still in need to improve. In the same way, they said that limitation of conducting e-transactions among professional traders, lack of IT education, and lack of speaking English language indicates the poor system of e-commerce in Kurdistan. Nonetheless, few Kurdish consumers are purchasing on online and if, it is only for simple needs such as buying clothes. No comments were given by them on the issues of trade fraud because of confidentiality. Lastly, they added that the only legal claims facing Korek is the problem of operation system of providing communication services.

7- At the end of the interview process, each of Mr. Zardasht Khalid, Mr. Ahmed Mustafa Ahmed, Mr. Jamal Abdulla Hassan and Mr. Ari Omar technical staffs at Korek said that internet services in Kurdistan are not confidence due to the poor governmental control on the communication services providers. Moreover, on the issue of using internet for purchasing goods and services, they stated that the Kurdish consumers do not trust the e-commerce because of lack of adequate laws to protect them from being cheated. Additionally, they did not comment on the issues of; trade fraud and legal claims facing Korek because of the confidentiality of information.

#### **4.4 Findings of Interviewing Aggrieved Consumers**

Based on the collected data from the informal interview of the selected aggrieveds mentioned in chapter three, the findings below were obtained:

1- At the beginning of the interview, Mr. Mohammed Ismail Abdullah a trainee lawyer at one of the legal companies in Sulaimaniah province said that the confidence towards the internet services in Kurdistan depends on the price and quality of internet services itself. It is also depends on the reputation of internet suppliers. In fact, internet services in Kurdistan are somehow witnessing gradual developing but still not realized in full. Moreover, the selected aggrieved replied that he conducted online transactions in various occasions for purchasing clothes and faced trade fraud once when he ordered a quality brand T-shirt but he got the fake brand one. Furthermore, he added that he is not confidence in dealing with online transactions because there are no much protections provided on the internet and Kurdistan is consider as one of many regions that suffer lack of laws treating this kind of issues.

2- Another aggrieved consumer, Mr. Osman Rahim Ibrahim a journalist at Xabat newspaper in Xanaqeen Province stated that internet in Kurdistan is quite improved and wide speared especially among journalists. However, the quality of internet services is still in need to improve because he got many difficulties while downloading international news and articles. Furthermore, he said that the confidence toward internet in Kurdistan relying on the quality of provided services by the suppliers. Nevertheless, many suppliers provide high quality internet services but some of them cheating consumers especially when they advertise for promotions of their prices of internet services on their own websites. In addition, he said that he is frequently using internet for purchasing goods and products. However, he faced



trade fraud when he ordered Samsung phone manufactured by South Korea but he received the Chinese product. Later, he added that protection on the internet is a serious issue facing Kurdish consumers because the issue of online transactions is new. Finally, he extended that many companies on the international levels attempt to advertise for their products in Kurdistan because it is an open region for foreign investment, so that it is significant for Kurdish government to adopt internet laws.

3- Other responds were given by Mr. Ahmad Mahmud Bakir an engineer at Galalah Company for construction services in Erbil province. Saying that, it is true that internet services are developing in Kurdistan but they are not meeting the quality levels. The internet speed in Kurdistan is in low levels especially when Kurdish consumers use internet for downloading programmes and software. The internet prices are high and not affordable. Moreover, he said that he is using online transactions frequently but with unfortunate he faced trade fraud when he purchased a kind of engineering programmes called "Auto Cad" used for designing maps with a price of 150 US dollars. The expiry date for this programme was for one year but the programme worked only three months. Finally, he added that he did not reported a claim because he was quite sure that his conducted transaction was at international level and because the legal system in Kurdistan is not much providing consumer protections on the internet and the classical laws are not covering this issue because it is a new method of transactions.

4- Another aggrieved consumer, Mr. Kurdo Ahmed Rahim a project manager at Qandil Company for import and export in Erbil province said that the internet services are in low quality and high prices become a serious issue in Kurdistan that made the consumers not confidence in dealing with online transactions. Additionally, he stated that he frequently used internet for purchasing flight tickets and did not

faced serious trade fraud only once during online top up for his phone line that was expired before using. Finally, he said there are a lot of laws in Kurdistan but not active to serve the issue of e-transaction.

5- In another occasion, Mr. Abdurrahman Osman Mohammed a petroleum engineer at Xalat Fuel Company in Sulaimaniah province said that internet as a social media is new issue for Kurdish community and witnessed gradual improvement in the past few years. Nonetheless, its services are in low quality comparing to other countries. In addition, he stated that he faced serious trade fraud when he involved with one of the International Iranian Companies for selling golden watches and jewelries identified by Iranian Global Network came to Kurdistan around 2006. This company advertised through its fake website providing offers for owning electronic shares of the company if a consumer purchases an item for one time with fixed price of 600 US dollars through an electronic bank account. Therefore, many of Kurdish consumers involved for making small businesses. In fact, they realized that the said company is only a fake company. Later on, a report submitted to the Public Prosecution in Sulaimaniah province demanding compensation. However, no action has been taken because of many reasons; the company located outside Kurdistan, the company was acting under a fake name, and there are no much legislation covering this issue in Kurdistan. Finally, the said aggrieved added that e-transactions are not confidence in Kurdistan and it is government duty to pay more attention to internet laws especially after the rapid growth of internet in Kurdistan.

6- In the same manner, Miss. Maryam Mohammed Ali a senior accountant at Nokan Company for Construction services in Sulaiamaniah province said that internet is a new technology. In fact, its applications are wide speared among all major cities in Kurdistan. However, its services are quite low comparing with other regions in Iraq

and its prices are high. Furthermore, she added that the confidence to apply e-transactions depends in the first instance on the quality of internet services and the availability of laws protecting consumer electronically. Nonetheless, the more significant issue facing Kurdish consumers is the weakness of electronic banking system and lack of payment methods through internet in Kurdistan. Finally, she extended that she faced trade fraud when she involved purchasing electronic shares of the fake Iranian Global Network Company, and Kurdish government could not take any actions because the said company was acting under a fake name.

7- Mr. Karwan Tania Dilshir a senior teacher in Erbil province said that he does not trust internet services in Kurdistan for many reasons, such as the bad quality of internet, high prices of its services and no available protections. Additionally, he said that he frequently uses internet for purchasing items especially software or computer's programmes. For example, he ordered one of the antivirus programmes for his laptop for protection of one year whereas the programme worked only three months. Finally, he stated that he could not complain because there is no law to protect consumers on online transactions in Kurdistan.

8- Another aggrieved consumer, Mr. Aras Ali Chawshin a manager of Razaw super market in Erbil province, stated that he does not rely on internet services in Kurdistan because the speed of internet lines is low and the prices are high. However, he frequently uses internet because of the nature of his job depends on the internet transactions. Moreover, he added that he ordered an I-Pad electronically with high trade descriptions at price of 1000 US dollars but while he received the said product, he realized that the descriptions did not meet the trade quality as well as he could not complain because the supplier company was located outside Kurdistan and no much protections provided by Kurdish laws.

9- Mr. Leazan Khalid Sabir a senior geologist at Kar Group in Erbil province said that Kurdistan witnessing incredible usage of internet among people because of the wide openness of the region and the grate interest to foreign investment in communication sector. In spite of this improvement, the internet services still consider low in quality and speed. Additionally, he said that he faced trade fraud while ordering a satellite device electronically identified by Toshiba brand at price of 400 US dollars. In fact, he received a Chinese manufactured satellite.

10- In a different occasion, Miss. Dilfraz Rasool a senior accountant at Biyaban Company for construction services in Erbil province stated that the confidence towards internet services in Kurdistan is quite low because of the issues of low quality and low speed of internet lines. In addition, she said that she did not faced serious trade fraud when she ordered three pieces of clothes through one of the local websites in Kurdistan. However, she only received two pieces of the said order. Later on she complained to the website owner and she received the third piece. The missing of the third piece was due to negligence of delivery department of the website. Finally, she added that the delivery services in Kurdistan are not comfortable.

## **4.5 Comparison between Malaysian and Kurdish Internet Laws**

The study elaborated the following statutes in both Malaysia and Kurdistan to indicate the similarities and the differences between both legal systems in terms of consumer protection on online transactions, as well as to show the weak and strong points of both systems in dealing with the issue of e-commerce.

### **4.5.1 Protections under the Consumer Protection Legislation**

The Consumer Protection Act 1999 of Malaysia provides a foundation for the control of advertisements. The Act basically regulates practices which are considered unfair to consumers including unfair online advertising practices. In efforts to restrain misleading online advertisements, the Act has been modified in 2007 in order to include its application to those transactions that affected by the usage of internet. According to section 2 of the Act, the CPA 1999 could be applicable to electronic transactions with the prescription given by the Minister. According to Sections 9, 10, and 11 of the Act, the provided protections are consumer protections against misleading, deceptive conduct, false representations, and unfair practices. Additionally, both sections 12 (1), and 13 of the Act states one main unfair practice is to give misleading indication as to price, and this includes bait or temptation advertising. Furthermore, section 14 of the Act also forbids any one from offering any gift, prize or other free items without intention of providing it or providing it as offered. It could be suggested that this prohibition connects to bait advertising as provided in section 13 of the Act as in both situations, the intention of advertisers is to entice potential customers to enter into transactions with them. According to section 84 of the Act, the committee is in charge of examining complaints relating to advertisements, and to issue information relating to the nature and features of goods

or services that may cause damage to consumers. Moreover, according to section 85, the consumer may pursue compensation against dishonest advertisers relating to any loss or damage suffered through a tribunal for consumer claims. While the new Iraqi consumer protection Act 2010 is still not active due to the economic situation of the country. However, article 9 of the Act provides prohibitions of practicing fraud and deception, fraud and hides the fact that the constituent materials to the approved specifications in all goods and services in order to promote consumer protection.

#### **4.5.2 Protections under the Trade Descriptions Legislation**

The TDA 1972 of Malaysia is a criminal statute in nature which fundamentally prohibits false or misleading statements in the supply of goods and services and it is applicable to both consumers as well as traders. According to section 2 of the Act, online advertisement is not expressly included in the definition of an 'advertisement', the definition is considered to include all forms of advertisement, whether printed or electronic. According to section 7A, a person who directly or indirectly offers to supply the goods or services and/or the person on whose behalf the advertisement is made is considered to have applied a trade description. Therefore, in the case of an advertisement in a third-party website, responsibility can arise on both owner of the website and the marketer. Section 14 (1) prohibits false and misleading indications as to price of goods, and this shall include price display in an advertisement. Section 15 also forbids false representation in supplying goods or services. In contrast, Kurdistan has not yet distinguished the trade descriptions from the consumer protection Act 2010. It means that all matters of consumer protection are subject to the Iraqi consumer protection Act 2010.

### **4.5.3 Protections under the Communications and Multimedia Legislation**

The CMA 1998 of Malaysia is the primary legislation that regulates online actions. In relation to online advertising, section 4(2) of the Act regulates only online advertisements to the range that the advertisements are provided by service providers licensed under the Act, and this creates a major limitation of the Act that imaginably prejudices the interest of the consumers as a whole. However, this Act does not specifically deal with online advertising but deals generally with offensive content by virtue of section 213 of the Act. Whereas Kurdistan issued the Abuse of Communication Means Act 2008 in efforts to prevent the abuse of using communication means, such as cell phones (mobile phones), internet and any other communication devices. This Act is characterized as disciplinary in nature in order to prevent the misapplication of communication devices by consumers, both against themselves and against others. The Act in its sections 2 and 3 imposes many penalties on anyone abusing such devices for any reasons that are in criminal nature.

### **4.5.4 Protection under Electronic Commerce Legislation**

The ECA 2006 of Malaysia provides for the legal recognition of electronic messages to facilitate commercial transactions on electronic media in accordance with section 6(1) of the Act. 'Commercial transaction' is defined in section 5 to mean "a single communication or multiple communications of a commercial nature, whether contractual or not, which includes any matters relating to the supply or exchange of goods or services, agency, investments, financing, banking and insurance." Based on this definition, an advertisement can be considered as a commercial transaction despite the fact that it is not contractual in nature. Since the rapid growth of the Internet as a new method of commercial communication today, it is certainly a good

development to expressly regulate online transactions. However, as far as the formation of online contracts is concerned, the Act simply shows that basic contractual principles as brought out in the Contracts Act 1950 of Malaysia apply to the formation of online contracts without addressing consumer protection in accordance with section 7 (1) of ECA. However, Kurdistan still does not establish such an Act.

#### **4.5.5 Protection under the Contracts Legislation**

This Act in Malaysia, manages principles relating to the formation of a contract. Part II of the Act provides for additional consumer protection relating to online transactions. As a general rule, the formation of a binding contract is complete when there is an offer, acceptance, consideration, and an intention to create a legal relation. The law on electronic transactions is clearly assured in the Section 7 of ECA 2006 states that offers and acceptances may be made electronically. Thus, those principles relating to the formation of contracts set out in the Contracts Act 1950 are equally applicable to online contracts. In online transactions, there is a question poses itself whether advertisements are contracts or just invitation to treat. Unfortunately, there is no provision in the Contracts Act 1950 or in the Electronic Commerce Act 2006 concerning the status of online advertisements. In general, the position in Malaysia is governed by the common law principle of invitation to treat. Similarly, the Iraqi Civil Code 1951 (Act 40) (ICC) which is applicable in Kurdistan also has no provisions concerning the status of online advertisement. Articles 103 and 104 of Iraqi Civil Code (ICC) 1951 formulate the formation of the contract by stating that the contract is the undertaking of an obligation by the contracting parties to perform a creation of specified matter, it is the tying of the offer with the acceptance. Moreover, the



clinching is the mutual confirmation of the offer and the acceptance in a lawful manner the effect of which appears in their object. This means that which relates to the offer and the acceptance in a sale for example is the thing sold, the price and the effect which appears in them is the legal consequences of the sale, such as establishing ownership of the thing sold to the purchaser and of the price to the vendor.

#### **4.5.6 Protection under Penal Legislation**

The Penal Code 1936 of Malaysia provides for the law on the offense of publication of offensive materials. This Act not only deals with the offensive materials in the physical medium such as books and publications, but the words "any other obscene object whatsoever" in section 292 shall include obscene materials in intangible medium as well such as the internet. In section 292(a) of the Act covers video compact discs which store visual images and reproduce them when they are played. Hence, the construction of the word "object" should be broadened in order to include all manner and objects that are in offensive nature. In addition, section 293 of the Act prohibits the distribution of offensive materials to a person who is under the age of twenty years. The offender will be charged with a term of up to five years of imprisonment or a fine or both. This section is of value to young people who are more susceptible to acts of obscenity in advertisements than adults. Similarly, Iraqi Penal Code 1969 has provided consumer protection against trade fraud by imposing penalties within section 466 on any person attempt to cause increasing or decreasing in the prices of commodities, and stocks intended for trading or disappearance of commodities intended for consumption by willfully announcing different facts, incorrect news, false claims or commit any other act involves fraud. However, the

IPC 1969 went furthermore than Penal Code 1936 of Malaysia in its section 467, the Act imposes penalties on any person who attempt to cheat another person who was a party to the contract related to the reality, nature, and essential description of any good, and commodity. Additionally, the Act in its sections 361, 362, and 363 in terms of threatening communication means imposes many penalties on any one threatening, or attempting to threat commutation means.

#### **4.6 Other Advanced Consumer Protection in Malaysian Context**

The Malaysian legislature attempted more advanced steps in protecting consumers through the internet transactions in comparing with the Iraqi or Kurdish legislatures that they did not which can be illustrated as the following statutes that gave more additional protection to the consumers in e-commerce:

##### **4.6.1 Direct Sales & Anti-pyramid scheme Act 1993**

This Act has been amended in 2010 to provide regulations of direct selling and prohibition of pyramid scheme activities. Delightfully, the amended Act has covered matters which are of considerable significance to consumers, including online advertising. The new section 19A prohibits advertising of goods or services on internet in a mail order sale, except in accordance with the Act. The main purpose of the 2010 amendment is to protect consumers from being cheated by those people who attempt to maximize profit from direct sales activities. Nonetheless, the effectiveness of the Act is yet to be determined because of the absence of case law at the moment in Malaysian environment.

#### **4.6.2 Indecent Advertisements Act 1953**

This Act is a specific legislation prohibiting advertisements that are indecent or obscene. However, in its section 3 the Act shows very loose in many aspects, such as excluding the non-printed advertisements from its application. In this point, the legislature regrettably fails to give a suitable consideration to many available methods of advertisements especially the electronic medium. Moreover, section 1 (2) of the Act is only applied to Peninsular Malaysia. Another aspect is that the terms "indecent" or "obscene" are not defined in the Act.

However, it is very clear based on the title of the Act that the intention of the legislature is to forbid indecent advertisements. It is therefore left to the specialized courts to make subjective interpretation of whether pictures, printed, or written documents are in obscene or indecent nature. Neither Iraqi nor Kurdish legislatures conducted these advanced steps because as mentioned before, the issue of protecting consumers on online transactions in Kurdistan are still not realized in full.

#### **4.7 Analysis and Discussions of Collected Data**

This section will base on two axes. The first one is analysis of the collected data stated in chapter three of this study and the second one is discussions. In general, communication services in Kurdistan suffering poorness of operation system to provide Kurdish consumers with high quality internet service. The reasons go behind; lack of governmental control on the internet service providers, and lack of communication infrastructure.

The most important point here is that Kurdistan Regional Government (KRG) attempted to privatize the communications sector in both local and international events as an intention to improve investment sector. It is quite true that privatization has its advantageous to improve the country and enhance the technology levels. Nevertheless, it has also disadvantageous, for example privatizing communication sector will open wide gates in front of internet providers to cheat people because the only aim of these providers will definitely be maximizing their profits by spending few costs and efforts. It is therefore, the responsibility of Kurdish government to adopt strict control system to prevent monopoly of the market by private internet providers to protect Kurdish consumers from being cheated.

Moreover, on the issue of adequate legal system, Kurdistan is still suffering lack of laws to protect consumers on online transactions, and this is because e-commerce still not realized in full. To overcome this problem, the best way shall be taken by the government is recognizing of both e-documents and e-signatures as initial steps of adopting internet laws and also this will lead to establish good electronic government in Kurdistan in the future. Furthermore, lack of adequate internet laws will create unsatisfactory of Kurdish consumer to precede e-transactions because he is sure that there will be no laws to protect him in the event of disputes.

Additionally, the limited use of internet in applying transactions in Kurdistan is also related to the lack of speaking English language. For example, only few people of Kurdish population can speak English because it is not formal language in Kurdistan and the majority of websites are in English, so that Kurdish consumers are not able to understand the contents of these websites.

Another point could be added here, is that the Kurdish consumers are in lack of information technology, and not familiar with technical aspects, thus they are not able to access through internet easily because they will not understand all terms and conditions of the offered good or service. In addition to that, lack or poor electronic banking system to provide credit cards is also another point affects the application of e-transaction in Kurdistan and reduces the trust of Kurdish consumers to perform e-commerce. The solutions of all said problems are in hand and easy. For example, Kurdish government can adopt programmes, such as awareness, IT educational, and language programmes to aware and educate Kurdish consumers through local Kurdish Medias about the use of e-transactions in order to create trust to perform such method of transactions. In the point of view of the researcher, adopting the experiences of other advanced countries in terms of consumer protection on online will be the best solution at the moment. For example, as previously mentioned that Malaysia went so far in establishing internet laws to protect its consumers through e-commerce, it is therefore a good application for Kurdish community to take in order to implement the context of Malaysia into its local legal system.

Based on previous analysis and discussions, the study has found a summary of following results in Kurdistan:

- 1- Lack of communication infrastructure and poor internet services.
- 2- Lack or poor legal system to provide protection on online transactions.
- 3- Lack of governmental control on the internet providers to reduce trade fraud.
- 4- Inactiveness of judicial system to determine recorded cases relating to online disputes.
- 5- Kurdish consumers are being cheated every day without knowing their rights when they perform e-transactions.
- 6- Poor e-banking system, and many procedural routines and high costs in providing credit cards.

#### **4.8 Summary**

The aim of this chapter in the first instance is to indicate the findings and the results of the conducted comparison between Malaysia and Kurdistan internet laws, as well as describing the given answers from the conducted interview of the selected panelist from governmental, non-governmental organizations and selected aggrieved consumers in order to give an adequate analysis. The findings from given answers might not represent the truth because of the lack of adequate institution for reporting cases involving trade fraud in Kurdistan which stands out as a barrier from interviewing those people have been cheated in using online transactions. Secondly, the study analyzes and discusses the collected data in order to find out best solutions for the implementation of adequate legal system to provide safe electronic environment for Kurdish consumers. Last but not least, the study shows findings and results of applying e-transactions in Kurdistan.

## **CHAPTER FIVE**

### **DISCUSSION, SUMMARY AND RECOMMENDATIONS**

The overriding purpose of this study is to compare both Malaysian and Kurdish context in terms of consumer protection on online transactions in order to examine internet laws in both countries. Furthermore, the study aims to implement the Malaysian context into local legal system of Kurdistan in order to improve the concept of e-commerce and creating the trust for Kurdish consumers due encouraging them to apply e-transactions.

To accomplish this aim it becomes necessary for Kurdistan Regional Government (KRG) to take an action of recognizing the issue of electronic documents and electronic signatures to reach some prerequisite goals. Determining what basic protection of Kurdish consumer means and how that ideal is connected with the field of internet technology assumed a high degree of importance during the literature review conducted for this study. In this effort, it becomes necessary to reach an understanding about the nature of electronic transactions in Kurdistan. This chapter reports the conclusions and suggestions that resulted from this study. Three versions of the interview instruments were conducted in this study. The first one was formal interview according to the requirements of the referenced letter no. P-30 issued by Universiti Utara Malaysia under College of Law, Government and International Studies (COLGIS) on 23rd of December 2013 directed to each of Council of Ministers of KRG, Ministry of Transportation and Communication, and Salah Uddin University in Kurdistan-Erbil. The second interview has conducted informally by selecting one of the popular communication provider companies in Kurdistan identified by Korek Telecom.

Another extra informal interview applied in this study involved group of random aggrieved consumers in Kurdistan. As indicated previously, a set of formal questions conducted in this study and presented for each group of panelist, identified by three governmental organizations in Kurdistan. The questions involved challenges and issues facing e-transactions or Internet law in Kurdistan, the scope of using Internet in Kurdistan, initial attempts of Kurdistan Regional Government (KRG) for establishing new laws, and possibility of applying Malaysian context into the local legal system of Kurdistan in terms of consumer protection on online transactions. Second set of questions were asked informally during the interview of another selected group identified by one of the popular private companies in Kurdistan (Korek Telecom for communication services) in order to make this study more informative. In this concern, the questions described the issues on confidence to the internet services in Kurdistan, trade fraud, and legal claims relating to e-transactions. In this occasion, majority of selected panelist answered the all questions delightfully while minority did not.

Classically, consumers were doing their daily transactions so close to home and they were protected within the scope of the rules of their national laws. The traditional theories of law in scope of contracts and the consequent obligations are difficult to implement them in the online world. The lack of confidence when a consumer deals with commerce electronically, made him to seek safe environment in order to meet his essential requirements. Recently, the world had witnessed a great improvement in the last twenty years in internet technology and became a popular method in applying daily transactions.



One of the most important tools in ensuring ethical trading environment is the use of consumer protection. Hence, protecting consumers in terms of e-transactions must be an important schedule for every country especially developing countries. Malaysia had adopted plenty of laws in terms of consumer protection through the internet in order to provide safe electronic environment for its consumers. Furthermore, this was due to adequate communication infrastructure and balanced electronic banking system. The situation in Kurdistan as previously mentioned in many occasions in this study is different. Achieving a fair balance between the needs of market providers and the consumers is certainly a major challenge to law makers in Kurdistan. Therefore, Kurdistan Regional Government (KRG) continuously attempts to cover the issue on consumer protection on online transactions especially the last finding of the Abuse of Communication Means Act (ACMA) 2008 passed by Kurdish parliament which is considered as the best control of abusing communication devices in Kurdistan. However, the issue of consumerism on online requires further attempts to achieve its goals.

Additionally, Kurdish government delightfully welcomes the idea of applying Malaysian experience into Kurdistan legal system in terms of consumer protection on online transactions.

Finally, the term "Suggestions" was used rather than "Recommendations" and the researcher is not authorized to give recommendations because recommendations legally show imperative meaning. The following suggestions are offered for related research in the field of consumer protection on online transactions to improve Kurdish internet laws in the future:

1- Adopting the Malaysian experiences in terms of consumer protection on online and implementing them into the legal system of Kurdistan especially both of Trade Description Act 1972, and Electronic Commerce Act 2006 as they provide great protections.

2- Considering the significance of consumerism and the weak legal position of Kurdish consumers, an adoption of effective electronic consumer protection act will be great improvement.

3- Establishing good information technology (IT) system in Kurdistan based on international standards in order to recognize the governmental documents electronically and attempting to establish the e-government due to connecting the governmental and non-governmental organizations in Kurdistan through one united line to achieve greater control.

4- Enhancing the electronic banking system in Kurdistan and reducing the procedural routine in issuing credit cards in order to encourage Kurdish consumer to perform their daily transactions electronically.

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## Appendices

### Appendix A

For the requirements of the data collection, first letter issued by Universiti Utara Malaysia and directed to Council of Ministers at Kurdistan Regional Government (KRG).

 <b>UUM</b> Universiti Utara Malaysia	Ghazali Shafie Graduate School of Government UUM College of Law, Government and International Studies Universiti Utara Malaysia 06010 UUM Sintok Kedah Darul Aman, Malaysia Tel: (604) 928 6601/6613 Fax: (604) 928 6602 www.uum.edu.my
<b>KEDAH AMAN MAKMUR • BERSAMA MEMACU TRANSFORMASI</b>	
UUM/COLGIS/GSGSG/P-30 December 23, 2013	
Kurdistan Regional Government Iraq Council of Ministers	
Sir / Madam	
<b>DATA COLLECTION FOR RESEARCH PAPER</b>	
This is to certify that <b>Kawa Akram Mohammed Amin</b> (Matric Number : <b>814038</b> ) is a full time Master student at Universiti Utara Malaysia, Sintok, Kedah.	
He needs to collect data for his research paper in order to fulfill the requirements of his programme.	
We duly hope that your organization will be able to assist him in getting the necessary information for his research.	
Thank you.	
<b>"SCHOLARSHIP VIRTUE SERVICE"</b>	
Yours faithfully	
 <b>DR. MAZLAN ISMAIL</b> Deputy Dean Ghazali Shafie Graduate School of Government UUM College of Law, Government and International Studies Universiti Utara Malaysia, 06010 UUM Sintok, Kedah	
<i>Su/kajian/eng/idris</i>	
	
The Eminent Management University	

## Appendix B

Second letter addressed to Ministry of Transportation and Communication in Kurdistan.

 <b>UUM</b> Universiti Utara Malaysia	Ghazali Shafie Graduate School of Government UUM College of Law, Government and International Studies Universiti Utara Malaysia 06010 UUM Sintok Kedah Darul Aman, Malaysia Tel: (604) 928 6601/6613 Fax: (604) 928 6602 www.uum.edu.my
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KEDAH AMAN MAKMUR • BERSAMA MEMACU TRANSFORMASI

UUM/COLGIS/GSGSG/P-30  
December 23, 2013

Kurdistan Regional Government  
Iraq  
Ministry of Communication and Transportation

Sir / Madam

**DATA COLLECTION FOR RESEARCH PAPER**

This is to certify that **Kawa Akram Mohammed Amin** (Matric Number : **814038**) is a full time Master student at Universiti Utara Malaysia, Sintok, Kedah.

He needs to collect data for his research paper in order to fulfill the requirements of his programme.

We duly hope that your organization will be able to assist him in getting the necessary information for his research.

Thank you.

**"SCHOLARSHIP VIRTUE SERVICE"**

Yours faithfully

  
**DR. MAZLAN ISMAIL**  
Deputy Dean  
Ghazali Shafie Graduate School of Government  
UUM College of Law, Government and International Studies  
Universiti Utara Malaysia, 06010 UUM Sintok, Kedah

*Su/kajian/eng/ldris*

  
The Eminent Management University

## **Appendix C**

Three versions of interview have been adopted in this study, such as follows:

A formal interview involved a number of panelists from three governmental organizations in Kurdistan identified by Council of Ministers, Ministry of Transportation and Communication, and Salah Uddin University in Erbil province.

The following questions have been asked in Kurdish language:

1- Aya em tegeza u babetane cin ke roo be rooi mamelati eliktroni ya xod yasai internet debnewa le harimi Kurdistan? (What are the challenges and issues that will be faced in e-transactions or Internet law in Kurdistan?).

2- Aya internet le harimi Kurdistan le ci bwarik bekar dit? (What is the scope of using Internet in Iraqi Kurdistan Region relating to commerce transactions?).

3- Aya hic hewl drawa le layan hkumeti herimi Kurdistan bo derkirdini yasai parastini bekarhiner le ser online? (Are there any initial attempts taken by Kurdistan Regional Government (KRG) for establishing new laws and regulations related to consumer protection via online?).

4- Aya dekrit yasai Malizi derbarai parastini bekarhiner leser online le naw sistemi yasaii herimi Kurdistan dabindrit? (Is there any possibility of applying Malaysian context into the local legal system of Kurdistan Region in terms of consumer protection on online transactions?).

The following list shows the names, positions of the selected respondents, place of work and the date of formal interview:

No	Name	Position	Place of work	Date
1	Azad Ismail Ahmed	Technical assistant	Council of ministers	31.Dec. 2013
2	Dr. Amanj Rahim	Legal consultant	Council of ministers	31.Dec. 2013
3	Karwan Raza Ahmed	General Director	Ministry of transportation and communication	03.Jan.2014
4	Payman Haurldin	Senior legal advisor	Ministry of transportation and communication	03.Jan.2014
5	Azad Mjeed Osman	Assistant general manager	Ministry of transportation and communication	03.Jan.2014
6	Nisan Shino	Director	Ministry of transportation and communication	03.Jan.2014
7	Zibar Atroshi	Head of internet department	Ministry of transportation and communication	03.Jan.2014
8	Samer Yaseen Noori	Senior engineer	Ministry of transportation and communication	03.Jan.2014
9	Dr. Azad Shukor	Senior lecturer	Salah Uddin University- Erbil province	05.Jan.2014

In addition, an informal interview conducted in this study involved a group of panelists identified by Korek Telecom Company for communication services in Erbil province. A set of five questions were asked in Kurdish language as follows:

1- Aya chand bawer u mitmanet be xizmat guzari internet haya le harimi Kurdistan?

(How much are you confidence with the internet services in Kurdistan?).

2- Aya krin de kay leser online? (Do you usually purchase online?).

3- Hic tusi feli bazirgani buit le kati krini electroni? (Have you ever been faced trade fraud while conducting e-transactions?).

4- Aya kompanya feli bazirgani kirdwa? (Does the company commit trade fraud?).

5- Am kise yasaiana chin ke roo be rooi kompanya debin? (What are the legal claims faced by the company?).

The following list shows the name, position of the selected respondents, place of work and the date of informal interview:

No	Name	Position	Place of work	Date
1	Akam Yaseen	Manager	Korek telecom company	10.Jan.2014
2	Aras Wahid	Supervisor	Korek telecom company	10.Jan.2014
3	Himn Tahir	Administrator	Korek telecom company	10.Jan.2014
4	Awni Asmer Hassan	Legal director	Korek telecom company	10.Jan.2014
5	Nezam Abdulla	Manager	Korek telecom company	12.Jan.2014
6	Saadi Khalid	Team leader	Korek telecom company	12.Jan.2014
7	Rezgar Akrawi	Manager	Korek telecom company	12.Jan.2014
8	Samer Akrawi	Manager	Korek telecom company	12.Jan.2014
9	Rezgar Mohammed	Supervisor	Korek telecom company	13.Jan.2014
10	Shoresh Iranpanah	Expert	Korek telecom company	13.Jan.2014
11	Zardasht Khlid	Technical	Korek telecom company	15.Jan.2014
12	Ahmed Mustafa Ahmed	Technical	Korek telecom company	15.Jan.2014
13	Jamal Abdulla Hassan	Technical	Korek telecom company	15.Jan.2014
14	Ari Omar	Technical	Korek telecom company	15.Jan.2014

Finally, another informal interview applied in this study involved a random population of 10 consumers faced serious trade fraud in Kurdistan. A set of three questions were asked each consumer as follows:

1- Aya chand bawer u mitmanet be xizmat guzari internet haya le harimi Kurdistan?

(How much are you confidence with the internet services in Kurdistan?).

2- Aya krin dekey Leser online? (Do you usually purchase online?).

3- Hic tusi feli bazirgani buit le kati krini electroni? (Have you ever been faced trade fraud while conducting e-transactions?).

The list below shows names, positions, workplaces and date of the interview:

No	Name	Position	Place of work	Date
1	Mohammed Ismail Abdullah	Trainee lawyer	Sulaimaniah province	15.May.2014
2	Osman Rahim Ibrahim	Journalist	Xabat newspaper- Xanaqeen province	15.May.2014
3	Ahmad Mahmud Bakir	Engineer	Galala company- Erbil province	15.May.2014
4	Kurdo Ahmed Rahim	Project manager	Qandil Company- Erbil province	16.May.2014
5	Abdurrahman Osman Mohammed	Petroleum engineer	Xalat Fuel company- Sulaimaniah province	16.May.2014
6	Maryam Mohammed Ali	Senior accountant	Nokan company- Sulaimaniah province	16.May.2014
7	Karwan Tania Dilshir	Senior teacher	Erbil province	17.May.2014
8	Aras Ali Chawshin	Manager	Razaw super market- Erbil province	17.May.2014
9	Leazan Khalid Sabir	Geologist	Kar Group- Erbil province	17.May.2014
10	Dilfraz Rasool	Accountant	Biyaban Company- Erbil province	17.May.2014