

CONSUMER PROTECTION ON ONLINE TRANSACTIONS IN KURDISTAN
LESSONS FROM MALAYSIAN LAW

By

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Theses Submitted to the Ghazali Shafie Graduate School of Government,
Universiti Utara Malaysia

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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

Malaysian Statutes		
Name of the statute	Year	No
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)

Kurdish Statutes		
Name of the statute	Year	No
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

The contents of
the thesis is for
internal user
only

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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).

 UUM 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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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.	
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Appendix B

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

 UUM 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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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	
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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 yasai 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