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# Legal Challenges for the Privacy and Data Protection of Social Networking Sites (SNS) in Malaysia: The Case of Facebook

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## ABSTRACT

*The growth of the internet has made online social networking popular among billions of individuals around the world. However, these people seem to forget that somehow they are revealing their personal information to people who are not in the circle of friends. Exposing real names, uploading pictures, revealing private information and updating their current status are some of the features provided by the SNS. Furthermore, there is no awareness among the Malaysians who use Facebook especially about their rights and protections by the law. Despite the risks of using SNS, the Malaysian laws do not specifically address the legislation or rules to guide the usage of SNS but it has expanded towards several legislations that include Communication and Multimedia Act 1998, Computer Crimes Act 1997 and Data Protection Act 2010. This research focuses on legal issues in Malaysia such as personal data, cybercrime and the use of Facebook in the workplace.*

**Keyword:** *Facebook, Privacy Concerns, Social Networking, Cybercrime*

## Introduction

The growth of the internet has made online social networking popular among billions of individuals around the world. They are connected and networked together to form a collaboration and communication, besides contributing their knowledge and wisdom the social networking site (hereinafter known as SNS). However, the user somehow seems to forget that they are revealing their personal information to those who are not in their circle of friends. Exposing real names, uploading pictures, revealing the private information and updating the current status are some of the features provided by the SNS, especially Facebook. Sophos Security Threat Report 2010 reveals that 60% people believe that Facebook is the biggest danger and possess the biggest security risk. According to Gross

and Acquisition (2005), the majority of Facebook users are between the 18-24 years old. This shows that SNS are most popular among the teenagers.

Therefore, by educating those from this group of age on the awareness of disclosed private information the percentage of privacy problems can be reduced, it will lead towards the issue of cybercrime where it is involving illegal acts using computer and network. Furthermore, there may no awareness among Malaysians using Facebook especially about their rights and protections by the law. Teenager may face cybercrime including sexual harassment, unauthorized use of data, suicide, producing obscene material, and infringement of copyright (Abu Bakar & Siti Hajar,2010).

Despite the risk using of SNS, Malaysian law does not address specifically the legislation or rules to guide the use of SNS but it had expanded towards several legislations including Communication and Multimedia Act 1998, Computer Crimes Act 1997 and Data Protection Act 2010. These act provided general understanding on the issue of cybercrimes and unauthorized use of data for the criminal purpose. Recently,in September 2011, Cyber Security Malaysia has issued the Best Practices for Social Networking Sites (SNS) which is the first guideline on SNS which explain do and dons when using this social media (Cyber Security, 2011).

Therefore, this study is very important to analyse legal challenges on SNS such as Facebook. It is hope of that this research would give benefits to the policy makers on how to deal with the legal and regulatory challenges ahead.

## **Social networking Sites (SNS)**

Socializing via the internet has become an increasingly important part of a young adults' lives (Gemmill & Peterson, 2006). Therefore, the use of Social Networking Site (known as SNS) has become the trend among young generation today. In general, SNS can be defined as an internet or mobile-based social space where people can connect, communicate, and create and share contents with each other (Abu Bakar & Siti Hajar, 2010); whereby the researchers have categorized SNS into several categories such as shown in Figure 1 below.

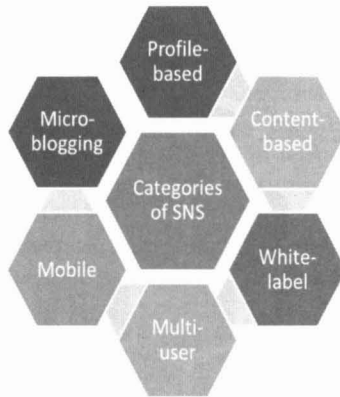


Figure 1: Categories of SNS

Facebook is the most popular and well known SNS which was launched in February 2004 whereby it categorized under the Web 2.0 technology. Features available in Facebook make SNS a medium where people can share knowledge, experiences and contribute ideas, besides the availability to create personal profiles, add other users as friends and exchange messages.

SNS can be defined as a web-based service that allows an individual to: (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system (Boyd & Ellison, 2008). Facebook was founded by Mark Zuckerberg with his college roommates and fellow computer science students, where this website was initially limited to the Harvard students. Then it expanded to other universities before it was opened to high school students and finally to anyone aged 13 and above.

## Facebook Features and Advantages

There are several features available in Facebook as one-stop social networking which the other SNS do not offer to other people. Figure 2 in the next page shows the features available in Facebook.

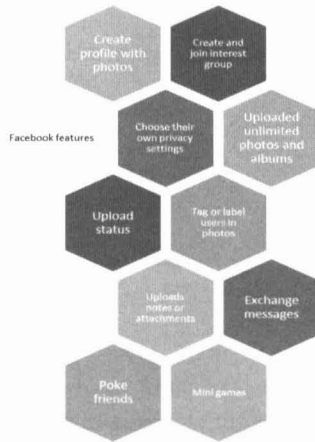


Figure 2: Facebook features

There are a lot of researches showing that Facebook is really attractive among the students because of the friendly graphical user interface (GUI), the features provided to the users, the technology used to find friends who are not in our social circle and the enhancement made by the developer from time to time to ease the use of Facebook. With these features, people are able to collaborate and communicate each other without any boundaries and so forth.

Certain organizations are using Facebook as a platform to improve business processes, increase productivity, and maintain business. We can see a lot of people nowadays with their own blogs and social networking sites to promote their products, such as shirts and pants, hand-made bags, sports accessories, camping stuffs, baby shirts and so on. Somehow, this encourages people to do business legally by following the terms and conditions provided by the seller and utilizing Facebook.

Facebook has proven to be universally addictive for college-aged students who tend to spend considerable amounts of their time maintaining social connections, making new acquaintances and maintaining a broad base of friends (Loving & Ochoa, 2010).

Most articles and journals on Facebook which use social networking a medium tend to focus on explaining its impact on social life and education, advantages of Facebook and concerns on privacy in SNS. The most accurate article found was written by Gross and Acquisti (2005) where they discussed on the amount of information disclosed and revealed from 400 students in Carnegie Mellon University. They have also listed the potential attacks might that the users may face once their private or personal information are exposed.

## Facebook Influences

Research from Fortino and Nayak (2010) focuses on the advantages of having Facebook as a platform to improve business processes and increase competitiveness. In fact, at the time of writing this proposal there were a few of articles published on the impact of using Facebook in terms of privacy and data protection.

Tse Hei (2008) found that these are the things where young adults do most on Facebook as shown in Figure 3 in the next page.

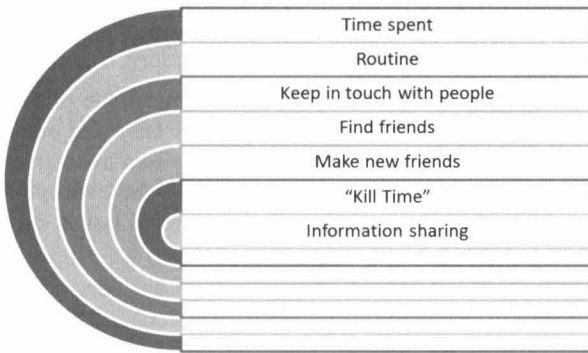


Figure 3: Facebook influences

College students who use Facebook spend less time studying and have lower Grade Point Average (GPA) than students who have not signed up for the social networking website. Kirschner and Karpinski (2010) proved that the Facebook users had lower Grade Point Average (GPA) and spent few hours per week studying than non-Facebook users. They may spend a lot of time maintaining their social connections and ignoring the important parts of their lives such as their studies, family trip, work and so on. Facebook should be benefited by any people without ignoring the culture and religious rules and concerned, by schooling themselves first to ensure the wisdom of usage.

## **Legal Issues on Facebook in Malaysia**

### **Privacy and Data Protection on SNS – The importance**

Unfortunately, Facebook's growth has received some of criticism regarding online privacy, child safety, sexual harassment and personal information theft. People do not realize that all the information exposed on Facebook, including the pictures and status posted give a lot of opportunities to the other third party companies which have already collaborated with Facebook in stealing their personal information, especially phone numbers and addresses. People who go online put their privacy at risk (UCLA, 2000). Students especially, at a young age somehow feel that by exposing or uploading pictures or posting statuses can make them popular among their friends attract their friends to view his or her profile.

The Malaysian law does not address the issue of SNS directly but spread in certain legislations involving cyber laws and other conventional laws. However, the issue of SNS will involve two main areas; privacy and data protection. It's very important to discuss the concept of privacy and data protection before moving to the main legal issues surrounding SNS especially Facebook.

### **The concept of privacy**

Generally, privacy can be defined as personal space of an individual, free from any interference of others. The idea of privacy covers all the cultures in the world where a person is entitled to control their information from being encroached by other people or organisations. (Nehaluddin, 2008). Most of these personal information are available on the internet especially the profile of individuals and how they interact with internet users. (Wallace, Jonathan and Mark Magan, 1996). Nehaluddin (2008) categorized privacy into 4 types which are related with personal data; information, physical, communications and territorial. Information privacy covers the handling and collection of personal data including credit information, medical and government record. Physical privacy deals with protection against invasive procedures such as genetic tests and drug testing. Moreover, communication will cover the security of e-mails, mails, telephones and other forms of communication. Lastly, territorial privacy concerns domestic and other environments including the workplace or public spaces including search engines, video surveillance and ID checks.

In Malaysia, the concept of privacy is not specifically recognize under Federal Constitution but most of it covers anti-terrorist and cybercrime acts. (Nehaluddin, 2008). The cyber laws that have implication for privacy such as the Communications and Multimedia Act (CMA) 1998, Computer Crimes Act 1997 and the Penal Code. (Nehaluddin, 2008, Sulaiman, 1997). All of these laws will criminalize acts that are considered unlawful interceptions of communication and allows police to track any unlawful activities with the assistance of internet service providers. However, in the case of *Ultra Dimension v Kook We Kuan* [2004] 5 CLJ 285, Justice Faiza Thamby Chik in his judgment argued that there are no privacy rights applicable in Malaysia. Thus, if any infringement, violation or invasion of privacy, it cannot be actionable in the Malaysian court. The only position of privacy that can be challenged was on abuse of woman's photograph as stated in the case of *Maslinda bt Ishak v Mohd Tahir bin Osman and Ors* [2009] 6 MLJ 826. The flawless concept of privacy in Malaysia has lead to the suggestion of enacting a statute to cover privacy. (Joanna, 2009).

### **Data Protection Law in Malaysia**

In globalized world with rapid development of using the Internet, data protection law becomes the major concern despite the main contention issues which involves 'boundary free' nature of the Internet. The existence of laws will become 'de facto' boundaries which limits the privacy and confidentiality of data. Nevertheless, the idea of data protection will give much benefit to the citizens to control their personal data and allows the government to regulate such policies and laws to overcome problems dealing with important national concern (what's meant by 'concern'). (Mohd Bahrin Othman, 2006).

In Malaysia, data protection is covered under Personal Data Protection Act 2010. Section 4 of the act defined personal data only for commercial purposes which are being process, records by means of equipment and put in forms of relevant filing systems. Moreover, under Section 2(1) of the act described personal data that is covered under this legislation is only related for commercial purpose. Consequently, the contentious issue will arise whether the act cover the activity in SNS which mostly for non-commercial purpose. It is very difficult to distinguish between the differences since the act silence on it. (Abu Bakar Munir, 2009 and 2011).

This paper will focus on three main legal issues regarding Facebook in Malaysia, as stated in Figure 4 below.

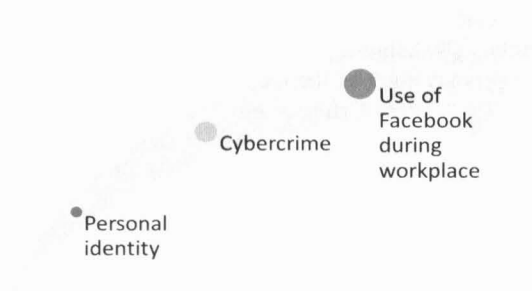


Figure 4: Legal issues on Facebook in Malaysia

### Personal Identity

A person can simply create an account by using someone else's identity, which is referred to as identity theft due to the nature of harassing others or to humiliating them for the sake of their own benefit. Identity theft can be categorized as a cybercrime. Many researchers agree that cybercrime are illegal computer-mediated activities that often take place in the global electronic networks (Wingyan, *et.al*, 2004), such as internet fraud, computer hacking, cyber piracy, spreading malicious codes and virus and so on.

Each person might have different privacy concerns based on their situations. Security and privacy issues are sensitive issues and concerned as it is widely used by students. Some concerns involve potential threats to personal safety from the abundance of information that is assumed to be available and accessible about an individual on their online profile (Nosko, *et.al*, 2010). Besides the Facebook profile page, Symantec Corporation, a security firm estimated flaws that close to 100,000 Facebook third party's applications which allow users to play games, shops or other tasks. (Fowler, 2011). Disclosing their information such as their full names, addresses, birthdays, contact information, photos, social security number (SSN), insurance number, credit card information, license number and so on may potentially provided to an identity thief where this unethical person uses the personal information for their own good and for unethical things (isn't identity theft synonymous to immoral and unethical?). Besides sharing knowledge and connections with friends, students do not realize that all the information provided may be used for false sense of security by the intruders as Facebook becomes targeted by unethical people because of its popularity.

Facebook has privacy features that could limit who can view these profile pages but most students ignore them (Raskin, 2006). By posting the latest information on their “Wall”, they risk exposing themselves to intruders. Therefore, educating the students to stay safe and protect themselves from revealing too much information on Facebook is the top priority. It is also the parents’ responsibility to enlighten the implications. Fogel and Nehmad (2008) studied the risk taking, trust and privacy concerns of Facebook among 205 college students using various scales and behaviour. As a result, individuals with SNS accounts have greater risks taking than those who do not have an account and mostly women have the concerns on privacy and identity information than men. Bateman, *et.al*, (2010) study found that individuals who have the self-disclosed intentions exposed themselves to a negative impact on their social life and personal life.

Another crucial issue dealing with Facebook also involves the data protection especially how the user wants to protect their privacy and deleting the personal data information. In the UK however, Facebook has been investigated by the UK Information Commissioner’s Office (ICO) on the failure to delete full profile of a complainant upon deactivation of his account (Nicole Martin, 2008). In the case of *Applause Store Productions & Anor. v. Raphael* [2008] EWHC 1781, Mathew Firsht, the plaintiff made claim against the defendant, Grant Raphael, his former friend on fictitious Facebook profile that defamed him including putting personal details of sexual orientation, birthday, political and religious view. The defendant also created a group webpage ‘Has Mathew Firsht lied to you?’ and contained materials that are considered private information. The court held that even not all information was accurate, there was a breach of privacy and awarded damages for misuse of private information.

Abu Bakar Munir (2010) raised the issue that the consent of data by individual initiatives will be another challenge in SNS, where the ‘traditional’ privacy concern only for data that is being manipulated by others. Cyber Security Malaysia (2011) has warned the privacy violation may not only occur in the personal data but also in taking picture through cameras without permission from the owner. The current legal position in Malaysia is under the Data Protection Act 2010 which only protects the use of personal data for commercial purposes under Section 4. However, it has been argued that the act itself does not include data protection over non-commercial activities which include the use of SNS. It is difficult to draw a line between the personal data that has been used for commercial and non-commercial purposes under the new act which causes a disadvantage to the future of personal data protection in Malaysia. (Abu Bakar Munir, 2009, *The Star*, 2011c).

## Cybercrime

Cybercrime can be defined as illegal acts involving computers, systems, application where a victim would suffer a loss and perpetrators made or could made a gain. (Ferrera, 2003). However, in certain countries, the cybercrime might be different. Spamming might be an offence in the USA but may not be in Malaysia. Online pornography is considered as freedom of expression in the US but the criminal act in Malaysia under Section 292 Penal Code. (Abu Bakar Munir & Sonny Zulhuda, 2010). Recently, there was a syndicate using Facebook to hire prostitutes but no action was taken even it is under the knowledge of police. (The Star, 2011a and b).

In most cases, Facebook users will find that their identity or data might be stolen by others, cyber porn, sexual harassment, copyright infringement involving videos, pictures which lead to a breach of the terms used. The Computer Crimes Act 1997, Communications and Multimedia Act (CMMA) 1998 and Penal Code are dealing with the issues involving cybercrime in Malaysia. Besides, other important laws including Seditious Act 1948 and Internal Security Act 1960 are dealing with issues of spreading rumours and stories that would cause public disturbance (Abu Bakar Munir & Sonny Zulhuda, 2010).

Article 10 Federal Constitution guarantees the rights of freedom of speech and expression for each citizen. However, these rights have been restricted in the interest of moral, public order and morality of society. Federal Constitution also provided limitation on the rights to protect the Malay Rulers, Special Privileges of Malay and indigenous people. However, there were some issues involving creation of certain groups within Facebook which insulting Malay Rulers and caused hatred among religions and races in Malaysia, (Bernama, 2010). Ahmad Masum (2009) had raised the issue of free speech in the internet where the needs of constitutional balance is very important to appreciate the freedom of information and at the same time restricted the form of speech which is considered sensitive to the Malaysian society.

Despite the cybercrime involving the penal approach, Abu Bakar Munir and Sony Zulhuda (2010) argued that the laws combat cybercrime needs to take a systematic approach because of two reasons. First, an international cooperation is needed to support the harmonisation between legal and regulatory framework including investigation and enforcement of the law itself. Secondly, allowing the industry to make it's own self-regulation within agreed laws considering fast development in technology.

## **Use of Facebook during workplace**

There are two main issues dealing with the use of Facebook during working hours. Firstly, does the use of Facebook affect the productivity of workers? Secondly, inappropriate comments made against employers and colleagues. Cyber Security Malaysia (2011), through the Best Practices of Using SNS argued that one of the impacts of using SNS without proper guidance will lead to less productivity especially in the workplace. Gino Dal Pont (2011) argued that SNS might be ethically dangerous especially to the relationship between clients and lawyers where the information posted in the SNS are potentially harmful because of two reasons. Firstly, matters communicated through SNS might be considered informal unlike formal letters or emails. Secondly, the nature of using SNS has opened the potential of being seen by larger audience especially all the friends within the account itself.

Not surprisingly, some organisations consider SNS as a double-edged sword and limits the use of SNS. Commonwealth Bank Australia, for example, had issued a social media policy not to use social media to post inappropriate comments about the bank. However, the Finance Sector Union (FSU) argued the bank to rethink its social media policy which will penalize the employees if their friends criticize the bank on Facebook. The policy being called as unreasonable and breach the Australian Fair Work Act 2009, (Jane Lee, 2011). Specifically, FSU gave four concerning issues including; the policy did not reflecting contractual conditions of employment if goes beyond the conduct that damaged the bank's interest or reputation, seek to extend the scope of an employee's implied obligations of good faith and loyalty, the term inclusion was unreasonable and finally it misrepresented employees' workplace right under the Act and other equal opportunity legislation. (FSU Australia, 2011, Farrell 2011).

In Malaysia, a good example of banning the use of social networking sites especially Facebook has been made by the Attorney General's Chambers based on two main reasons; employees lacks of focus during working hours and slow the access to other online applications during office hours. (Attorney General's Chambers, 2010).

## **Suggestion and Recommendation**

It is very important to realize the role of all parties needed to ensure the legal protection when using SNS especially for government, private organizations, service providers and the young generation themselves. These entities need to play active roles to ensure the safety in use of SNS that will benefit the community overall.

The government plays a significant role in providing the mechanism to guide and protect the use of SNS. Abu Bakar and Siti Hajar (2010) suggested that the government needs to enact laws that govern the use of SNS especially in the case of cyber-bullying for children and also employees. Issuing guidance will also become a good step for legal protection especially for parents or guardians to control the use of the internet among children. Malaysia has made an effort under Cyber Security to provide documents on the best practices using SNS covering all users. The latest guidance is divided into two parts; analysing the possible impacts of using SNS, and general guidance when using SNS. The possible impact discusses the effects of using SNS in one's daily life while the guidance provides useful tips and security. (Cyber Security Malaysia, 2011).

In the United Kingdom, the Home Office in London has issued Good Practice Guidance for the Providers of Social Networking and other User Interactive Services in 2008 to cater especially for children protection in the internet. They become the large number of people who use the SNS. In order to avoid any harmful act against children, the guidance suggests such guidance and protection needed including 'think before you post', control personal information when setting up your profile, and avoiding posting sexual or provocative images. (UK Home Office, 2008). Besides children, the UK Home Office (2008) also provides guidance for service providers. It includes providing accessible and easily understandable language to avoid harassment, and offer links for online safety and security. Moreover, safety guidance for controlling privacy of the data and parental guidance is also very important to ensure that personal data can have the option to request, bar and control by the authorized person.

Farell (2011) provided several recommendations for the organization to exercise their self-regulating mechanism of using SNS. The rules and procedures must be clear including distinguish between using SNS either for social or private person. Therefore, the needs for reviewing the policy and legislation involving employment, industrial law, code of conducts and workplace agreements are very crucial to ensure the balance between individual rights as employee and interest of organization will be protected. The SNS policy itself must be provided with consequence for the breach and needed to be regularly reviewed in order to ensure it applies to new development within SNS itself. Recently, Malaysia in ITU Conference 2011 in Geneva stressed the importance of balance social engagement in SNS especially Facebook with the human values in order to create responsibility. This does not specifically address the role of the government, organisation and service providers but the individual themselves. (Bernama, 2011).

## **Conclusion**

The use of SNS especially Facebook has become a new trend within the society especially among the young generation. However, the laws until today do not adequately protect the victim and allow perpetrators to manipulate the personal data and do such criminal activity on Facebook. Recent laws especially on Personal Data Protection Act 2010 and no protection of internet privacy (cannot comprehend) in Malaysia are still far from addressing any of the issues on the misuse of identity in SNS. The enforcement of the law has also becomes another pitfall in the legal system especially when the right of privacy is not recognize adequately in Malaysia. Despite the best recently practiced of SNS issued by Cyber Security Malaysia, tougher laws and mechanisms of enforcement are still very important to ensure that the users will be protected and the perpetrators will be punished accordingly.

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