

**A STUDY OF THE REGULATORY FRAMEWORK
ON ELECTRONIC COMMERCE AND CONSUMER PROTECTION
IN MALAYSIA**

Presented to

**Consumer International Asia-Pacific for the
Asia IT&C Project on Protecting Consumers in E-Commerce Transactions
(PROCONNECT)**

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ABSTRACT

This study examines first, existing legislation governing e-commerce transactions in Malaysia, and second, the redress mechanisms available to online retailers and customers. Various legislations that affect Internet related activities, whether directly or indirectly, were examined to see the level of protection provided to consumers. The strengths and weaknesses that exist in them were also analysed. In essence, an e-commerce consumer is like any other buyer except that the method of shopping is different. Thus, the consumer should be afforded the same legal protection.

Based on related studies conducted by the researchers in Malaysia, several consumers thought that they are still not adequately protected. For instance, the Consumer Protection Act 1999 is to protect consumers against misleading and deceptive conduct, false representation, and unfair trade practices. However, e-commerce consumers are outside the ambit of the Act unless otherwise prescribed by the Minister. The study also examined methods of settling disputes other than by going to courts through Alternative Dispute Resolution including arbitration, mediation and conciliation. In its effort to build confidence and trust in e-commerce transactions, the government has proposed two new Bills: the Electronic Commerce Bill and the Data Protection Bill. Both Bills adopt the principles of the UNCITRAL Model Law on Electronic Commerce 1996. The provisions are more comprehensive and to a certain extent may resolve matters that were not covered by other statutes. The researchers propose that these two Bills be passed as speedily as possible to enhance e-commerce activities in Malaysia.

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1.0 INTRODUCTION

Malaysia aims to become the global hub of e-commerce activities. To achieve this, consumers who shop online should be afforded at least the same level of protection as ordinary shoppers. In fact, online shoppers should have additional protection bearing in mind the nature of the shopping exercise. Disgruntled consumers buying products from another country via the Internet will not have the opportunity of complaining to the retailers face-to-face. These consumers may then decide to avoid online shopping altogether. Therefore, to ensure the continued expansion of e-commerce, the law has to adequately protect consumers.

Even though e-commerce may be categorised into several types, this study intends to concentrate on situations when businesses sell products or services to individual consumers (B2C).

In Malaysia there are various legislation that deal specifically with Internet-related activities, such as the Digital Signature Act 1997. This study will examine these statutes in order to see the level of protection provided to consumers. The study aims to analyse their strengths and weaknesses in relation to e-commerce transactions.

Traditional laws, though not specifically enacted for Internet users, will also be looked at in order to assess their adequacy in dealing with online shopping. These laws are also relevant to online buyers and sellers in that they may be adapted to suit online transactions. After all, an online buyer is like any other buyer. Problems faced by online buyers are often also faced by traditional buyers. For example, both types of buyers may face problems of defective products and late delivery. The difference lies in the means of making the purchase. Thus, the existing laws and practices that apply to traditional forms of commerce in Malaysia may be stretched to apply to Internet activities, including e-commerce transactions. Legislation such as the Contracts Act 1950 and the Sale of Goods Act 1957 are examples of such laws.

Consumer disputes may be settled using the court system or an alternative system. Our study¹ found that when shopping online, 29.2% of the consumers specifically read the

¹ Report on Survey of Online Shoppers in Malaysia (January 2005) presented to Consumers International Asia Pacific for PROCONNECT.