



Protecting Children's Rights in the Internet: Challenges A Preliminary Study Based on the Malaysian Experience

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Abstract

In the emerging information focused society and the widespread use of Information, Communication and Technology, (ICT), most governments have been facing the dilemma of regulating the borderless domain known as cyberspace. As a new and borderless medium of communication, cyberspace is very much public territory. Justice O'Connor in Reno v ACLU commented, "cyberspace undeniably reflects some form of geography". Geographically, cyberspace has gathered Internet users from all across borders. A national survey revealed that obscene download is the fourth most common breach of Internet security in Malaysia. Such a finding has created a vast number of responses from political figures, legislators, academics and the public at large. Recently, the Malaysian government launched a campaign "Using the Internet Positively" with the objective of promoting positive use of the Internet among children and young people. The Malaysian Government upholds its decision on non-censorship of the Internet in order to boost the progress development of ICT in line with the development of Multimedia Super Corridor (MSC). The participation of children and young people in the Internet is considered a positive development towards enhancing their educational skills and employability. On the other hand, the rights of children, as enshrined in the United Nation Convention of the Rights of the Child (UNCRC) have been broadly accepted worldwide, including in Malaysia. Malaysia has reserved, however, eight articles from the UNCRC, hence, this paper interrelates the Convention with the child's right to use the Internet. The aim of this paper is to examine the emerging fears of negative influences that the Internet may offer and whether the rights enshrined in the well-accepted UNCRC could be further extended to the domain of cyberspace. This paper begins with an overview of factors that lead to the emerging fears regarding children using the Internet in Malaysia. It then explores some provisions of the UNCRC in respect to children's rights and their parallel application in cyberspace. The desirability of protecting the child's right and the need to conform with the UNCRC requirements in the cyberspace context challenge the existing legislation. The paper argues that law should be seen as a

medium to respond to such a situation, even though it creates an uneasy mixture of the prophetic and perhaps censorship in regulating the Internet.

1. Introduction

In the early revolution of the Internet, not many countries had access to it.¹ Access to the Internet is limited to those children² who can afford to get connected with the online world. Since its revolution, the Internet as new media has been embraced in almost every aspect of our daily lives, from electronic banking, education, medicine and so forth. The Internet therefore serves as a multifunctional media. The fascination of the Internet has hooked children and young people to the extent that they are often more advanced than adults in using the Internet. Children are being portrayed as the “Information generation”, or the “computer generation” in their relationship with this new media. For the first time, many children know more, or as much as, their teachers know about these technologies. In Malaysia, the full support and encouragement from the Malaysian government to the use of ICT can be seen from the development of Multimedia Super Corridor (MSC) and other programmes related to ICT. The government has passed several cyberlaws to meet the challenges in governing ICT. It has said in the past that it will not censor the Internet, a commitment made in the MSC, Bill of Guarantees. It has exhorted Malaysians to practice self-censorship, self-discipline and self-education while surfing the World Wide Web. Optimists view the emergence of the Internet as a chance for democratic and community-based participation, for creativity, self-expression and play, and to enhance the expansion of knowledge, whereas pessimists lament the end of childhood, innocence, traditional values and authority.³ The aim of this paper is to examine the child's right to participate in the activities of the Internet and the emerging fears of negative influences of the Internet to children and young people being echoed in the popular media in Malaysia. The paper will question to what extent the reservations made by the

¹ Throughout this paper, the words cyberspace and Internet have been used interchangeably.

² ‘Children’ are defined in accordance with *Article 1 of the United Nation's Convention on the Rights of the Child*, as those below the age of 18 years old. However, in terms of navigating the Internet independently, it is difficult to ascribe at what age children are deemed competent as it requires computer literacy.

³ Livingstone, S. (2002). *Young People and New Media, Childhood and the changing media environment* London: SAGE Publications, p 2.

government could be materialized in cyberspace? If the alleged harm is greater than its benefit, should the government regulate children's participation in using the Internet? This paper begins briefly on media reporting about children and the Internet from the Malaysian perspective, then, it explores challenges in protecting children's rights and the reservations being made by the government and its application in cyberspace. This paper concludes with a call to rethink new strategies and policies to protect children's rights in cyberspace within the context of the Malaysian perspective.

2. Media reporting, Children and the Internet.

Generally, Malaysian media reporting about the Internet has been supportive of the efforts taken by the government in moving towards an information society. On the other hand, the media has been highlighting the decisions taken by the government to retain the no censorship policy for the Internet. The government has reaffirmed non-censorship policies for the Internet, and any breach of these policies are intolerable.⁴ In other words, flow of information and communication in the Internet will not be subject to any censorship. This policy became an issue due to a survey revealed by the Malaysian National ICT Security and Emergency Response Centre (NISER), which identified that obscene content download, is the fourth most common Internet security breach in Malaysia. In another survey, it was disclosed that 9 out of 10 children and teenagers between 8-16 years old had seen pornographic websites accidentally while searching for information for their school home-works.⁵ The former Prime Minister, Mahathir Mohamed has suggested that it is necessary for parents and government to block obscene material on the Internet. This suggestion has caught the attention of many and has been discussed by various parties.⁶

In 1998, non-censorship policy was also raised in the context of the operation of cybercafes. It was reported that school children spent their time in cybercafes viewing

⁴ Section 3 of the *Malaysian Multimedia and Communication Act 1998*.

⁵ N.a. (2005) 90% sekolah layari laman lucah. *Utusan Malaysia*. 27th July.

⁶ Mohd Zin, A.N, et al. Mitigating Negative Content, *The Star, In Tech*, 12th July 2005, available at http://www.niser.org.my/resources/mitigating_internet_content.pdf, accessed 25 July 2005.

pornography and obscene websites. Cybercafes also have been used as a place for Internet gambling. In one instance, a schoolboy was caught with huge debts due to his online gambling activities at cybercafes. As a result, the government has been urged to introduce new regulations in order to curb cybercafes being exploited.⁷ Again, the government affirmed that they would not introduce any new legislation that was tantamount to Internet censorship, rather, the government is considering a set of guidelines attached to cybercafe licenses to help curb illegal online casinos.⁸ The operation of cybercafes have been supported by the government as a way of creating Internet awareness among the public, yet such public premises have been misused and attract children and teenagers to spend excessive hours in cybercafes.

News reports that there are 1.5 million pornographic websites that could be easily accessed by Internet users⁹, that the use of the Internet among teenagers has created the possibility of 'cyber bully',¹⁰ or that some sites contain harmful information that teach how to rape a child¹¹, are just some of the negative news reports which create fears among parents and educators on the probable harm and risk to children. In a front-page report, it was revealed that cyber bullying is common in schools in Klang Valley, and has in fact been around for at least five years. ASP Mahfuz Abd Majid from the police Technology Crime Investigation Unit confirmed this, saying that the same bullying cases he saw 20 years ago are now taking place online. Although NISER has not received any single report on cyber bullying, it is thought that such activities would be considered an infringement of the existing cyber laws.¹² Not only does the content of the Internet pose a threat, but the use of it raises queries as to what extent our children and young people are benefiting from this technology?

⁷ Rao, Angela. 1998. Subang Jaya council seeks control on cyber cafes. *New Straits Times*, 4th December.

N.a. 1998. Re-thinking ruling on cybercafes, Government urged, *New Straits Times*, 14th December.

⁸ N.a. 2000. Government Sticks to "Hands Off" Policy. *The Star*. 1st February.

⁹ Yapp, E. (2005). ISPs blocking Web access not best way. *The Star*, 31st May.

¹⁰ Anandarajah, A. (2004). Cyberbully. *New Straits Time*, 30th September.

¹¹ Abdul Malek, Yusri. 2004. Laman Web-Rogol-Boleh pengaruhi remaja jadikan kanak-kanak mangsa seks ganas. *Harian Metro*. 10th April, p A13.

¹² Anandarajah, A. (2004). Cyberbully. Op cit., n.11.

By and large, some commentators argue that the information available in the Internet is not suitable for children and young people. In a newspaper column, a journalist relates the flow of harmful information in the Internet with escalating numbers of murder and rape by young juveniles in the year 2003 in Malaysia.¹³ He observed that there are quite a number of websites which provide harmful information including pictures showing how to rape a child. This information is obviously inhumane and morally condemnable. To what degree such information influences children, especially the young juvenile, is highly questionable and there is no evidence that connects these young juveniles with such information available in the Internet. Furthermore, not much can be said on Malaysian children and their activities using the Internet, as there is a lack of empirical research on the use of the Internet by Malaysian children.

Due to the intense concern on the negative contents, the Malaysian government has launched a campaign known as "Using the Internet Positively" which include the steps taken to control children from being exposed to the "harmful" effects of obscene material on the Internet.¹⁴ Besides the campaign, the Deputy Prime Minister has called for self-regulation in the private sector, and that schools and cybercafe operators work to prevent the access of pornography websites. Indeed, the Malaysian cabinet agrees that it is one of the conditions that need to be satisfied before cybercafe operators may obtain a license from the Ministry.¹⁵ At the same time, the Malaysian Crime Prevention Foundation (MCPF) has proposed that the Government enact laws against online pornography. The MCPF Vice-President argues that if 'cybersmut' continues to be circulated, it is time for the Government to take a second look and see whether it could do something about it.¹⁶

¹³ Abdul Malek, Yusri. 2004. Laman Web-Rogol-Boleh pengaruhi remaja jadikan kanak-kanak mangsa seks ganas. Op cit., n. 12.

¹⁴ Hisham. T, H, PUIP galakkan manfaatkan Internet secara positif, Berita Harian, 1st August, 2005, available at <http://www.bharian.com.my/m/BHarian/Monday/Komputer/20050801073645/Article/>, accessed 1st August 2005.

¹⁵ N.a. 19th July 2005. Porn Sites: Najib Calls For Self-Regulation. The Star. Available at http://www.niser.org.my/news/2005_07_19_01.html, accessed 1st August 2005.

¹⁶ Idem.

3. Regulating the Internet for the sake of children?

Regulating the Internet has been a challenge for most countries attempting to ensure that law and order is being observed in cyberspace. The Malaysian government has clearly re-affirmed the non-censorship policy enshrined in the *Communications and Multimedia Act 1998*.¹⁷ Yet, leaving cyberspace free of state interference brings problems to Internet national security. The Malaysian government believes that any censorship of the Internet needs to be supported globally and that it cannot be done alone. The Minister of Energy, Communications and Multimedia made a call for a global consensus to regulate offensive contents in the Internet and to protect the public from their adverse effects.¹⁸ The effect of the Internet has been realized by the government, this can be seen by what Abdullah (Deputy Prime Minister) said:

The freedom of the Internet is cherished and lauded. The liberals will have you believe that any restriction to the flow of the Internet is an affront to the spread of knowledge. And yet we have seen the destruction wreaked by the love bug and the hacking of popular e-commerce portals. We have seen how blueprints for making bombs can be downloaded on the Net. We have seen the anomie that has affected the cyber generation hooked on destructive web games. Liberalisation should proceed in tandem with the *strengthening of domestic financial institutions, regulations and rules*¹⁹

The existing cyberlaws, such as the *Malaysian Communication and Multimedia Act 1998*, cover social regulation in the Internet. This principle is dealt with in two parts, firstly, licensing and secondly, on content requirement, which is as follows:

¹⁷ Section 3(3) of the Act clearly spell out; "Nothing in this Act shall be construed as permitting the censorship of the Internet". See N.a. 25th January 2000. Policy is still not to censor the Internet, *The Star*. N.a, 18th October, 2004, R. Sharif, Online Content, Government Dangles Carrot, Wield Big Stick, *In Tech, The Star*, p3.

¹⁸ N.a. 8th September 1999. Proposal to regulate the Net. *The Star Online*. <http://thestar.com.my/Starpublications Bhd>.

¹⁹ N.a. (2000). Abdullah: Cyber Terrorism Posing a Real Threat, *The Star*, 5th June.

“ No content applications service provider, or other person, using a content applications service shall provide content which is *indecent, obscene, false, menacing, or offensive* in character with intent to annoy, abuse, threaten or harass any person”. (Emphasis added)²⁰

Given the conditions above, it seems that for those who provide indecent content in the Internet, the intent to annoy, abuse, threaten or harass must be proven before it is considered an offence. However, what about those who do not have the intent to do so? For example, there are photos of naked children captured at the request of the parents as part of their collection - should these pictures also fall under this category? Could these parents fall under the concept of “innocent carrier”? The CFM recognizes the concept of “innocent carrier” as those who provide access to content but who has neither control over the composition of such content, nor any knowledge of that content. An innocent carrier is not responsible for the content provided online.²¹ It seems that there is no clear provision when it comes to contents of personal sites when others may feel threatened by their content. The Act itself is still in its infancy, and there remains to be any case law decided under it that may attest to its strengths or weaknesses. No doubt it is not infallible, but it should be flexible enough to adapt to changes and reforms.²²

Besides the existing legislation, there is no further movement towards the self-regulation that can be seen in the Content Code. The Malaysia Communications and Multimedia Commission (MCMC) is under the supervision of the Ministry of Energy, Communications and Multimedia and is given the power to legislate and regulate communication industry. MCMC established the Communications and Multimedia Consumer Forum of Malaysia (CFM) to gain views from industries pertaining to communication in Malaysia. This forum is a national organization that works on the basis of industry self-regulation. It represents four bodies, derived from the industry groups; they are given the task to come up with self-regulatory codes, namely, technical,

²⁰ Section 211(1) of the *Malaysian Communications and Multimedia Act 1998*

²¹ Content Code. Available at: http://www.cmcf.org.my/HTML/cmcf_content_code_information.asp, accessed on 21st February, 2006.

²² Abdul Ghani Aziz, [2004]. S.A. The Communications and Multimedia Act 1998: Of Challenges and Possible Remedies. 4 *Malayan Law Journal*, p clxxxii.

consumer, content and access codes. Until now, two Codes have been completed, namely, the General Consumer Code of Practice for the Communication and Multimedia Industry Malaysia and the Content Code. The CFM is made up of 48 members from various industries such as Service Providers, Telecommunications companies and Broadcasting stations (known as the "Supply Side") and Non-Governmental Organizations and Public Interest Groups (known as the "Demand Side").²³ It is submitted that public participation is highly encouraged to ensure that CFM consists of representation from all levels of Internet consumers in Malaysia. Hence, continuous campaigns and promotion is indeed fundamental in making CFM a platform for voicing the dissatisfaction of the Internet consumer, not only regarding the service provided but also in respect to the social regulation of the Internet. To restrict the participation of the Forum to only industry representatives would not create a sense of Internet awareness amongst Internet users. Educating the Internet user is a strategy being voiced by the Chief Executive Officer of one of the Malaysian Internet Service Providers. He argues that while access could be blocked by various filtering technologies, "this is not a perfect solution" and would prefer educating the public about the Internet, as opposed to regulating the flow of information. Furthermore, he argues, "to require ISPs to filter the Internet may lead to an enforced regulation of the information environment in the country, which is contrary to what the MSC stands for".²⁴ CFM should be seen as a platform to educate the national Internet users in using the Internet wisely, and it opines that ISPs owe social responsibility in educating the Internet users. Akdeniz (2001) in commenting on regulating the Internet, says:

There should be more emphasis on promoting the Internet as a positive and beneficial medium, and there is urgent need for awareness of Internet usage. If a "light regulatory touch" with an emphasis on self-regulatory or co-regulatory initiatives represents the government's vision, then self-regulation should mean

²³ Consumer Forum Malaysia (CFM). About CFM, Available at <http://www.cfm.org.my/indexenglish.jsp>, accessed 21st February, 2006.

²⁴ Yapp, E. (2005). ISPs blocking Web access not best way. *The Star*, 31st May.

individual regulation, rather than self-regulation by the Internet industry without the involvement of individuals and Internet users.²⁵

Furthermore, Akdeniz argues that putting pressure on the ISPs to resolve content related matters will only hamper the development of the Internet and electronic commerce within the UK.²⁶ In a developing country like Malaysia, the penetration of the Internet is still considered low compared to its population; too much control or rigidity might effect the development of ICT in this country.

On the other hand, those who are against government censorship of the Internet have argued that "no censorship" does not mean the people are free to indulge in pornography with impunity and with disregard to existing laws. If these laws are breached, the perpetrator will still be liable. However, the question here is whether the existing laws are flexible enough to cater for those actions which are against the law? What remains questionable is what should be the balance between promoting the positive use of the Internet among children, and their rights in terms of using new technology such as the Internet? To what extent shall children have the right to participate as an Internet user? If the polemic on adverse effects of the Internet to our children is greater than its benefit, shall government regulate the participation of children in the Internet?

The debates on regulating the contents of the Internet is not new and it has been a long-term ongoing debate in various nations such as the United States (US), the United Kingdom (UK) and Australia. In the mass media in the US, UK and Australia, a "moral panic" has developed over the risk that children may be contacted by strangers or paedophiles through chat rooms or e-mail.²⁷ It is alleged also that uncontrolled access to information by children is putting children at risk. Media concern about the Internet can be seen as a global concern and this arises as the number of Internet users increase. The governments have taken legislative control to deal with the emerging fears about children

²⁵ Akdeniz, Y. (2001). Controlling illegal and harmful content on the Internet, in Wall, D. (ed). *Crime and the Internet*, London and New York: Routledge, p 133.

²⁶ Akdeniz, Y.(2001), Controlling illegal and harmful content on the Internet , Op cit, n. 26 at 121.

²⁷ Evan and Butkus. (1997). Quoted by Valentina, G and Holloway, S. (2001) On-line Dangers? Geographies of Parents' Fears for Children safety in Cyberspace. *Professional Geographer*, 53(1), p 71.

and the Internet. In the US, the government has introduced the *Children's Online Protection Act 1998*, which designs to prevent owners of certain types of Internet websites from collecting information on children under the age of 13 years old without permission from parents.²⁸ The *Australian Broadcasting Services Amendment (Online Services) Act 1999* attempts to regulate content that is physically in Australia and the ability of Australians to access content (whether located in Australia or outside Australia) though contents located outside Australia is now within the Australian jurisdiction. Whereas the *English Children Protection Act 1978* (as amended by *Section 84 of the Criminal Justice and Public Order Act 1994*) provides that it illegal to actively seek out indecent images of children.

There have been private efforts to protect children online, which are widely known as filtering software. The debates on proposed and filtering systems are also a growing concern in the United Kingdom. Yet, the effectiveness of filtering systems is still questionable.²⁹ Despite the Malaysian Government's campaign (the call for "self-regulation" and to remain with the non-censorship policy), there is no clear indication as to where the Government is heading with regards to governing the Internet, especially in the context of the social development of our children and young persons. Despite the capacity of the Internet as a multifunctional media for communication, information, electronic commerce, electronic banking, to name but a few, some mechanism must be developed to protect vulnerable groups such as children and to put parents at ease. Society is also becoming far more aware of the demands of the UNCRC, with most public agencies attempting to comply with its broad aims.³⁰ Given that protecting children is clearly enshrined in the UNCRC- we (as a responsible adult) believe this principle of protection should be extended to cyberspace. In fact, we can see movement

²⁸ Spitzer, Eliot. 2001. Breakthrough Cited in War Against Child Porn. Available at http://www.oag.state.ny.us/press/2001/feb/feb16c_01.html, accessed 1st August 2005

²⁹ For critique of rating and filtering system, See Akdeniz, Y. (2001). Controlling illegal and harmful content on the Internet, op cit, n. 26, at 127-131.

³⁰ Fortin, J, (2003). *Children's Rights and the Developing Law*, (2nd edn), UK: LexisNexis Butterworths, p 590.

towards promoting the child's right in cyberspace by Childnet International, a non-profit organization that introduced the *Children's Bill of Rights for the Internet*.³¹

4. Children's Rights in Malaysia: An Overview.

In 1995, Malaysia became a signatory to the United Nations Convention on the rights of the child. *The Convention on the Rights of the Child* (UNCRC) provides 54 articles pertaining to child protection and has been ratified worldwide. This Convention guarantees the right of a child as an individual. In general, this United Nations Convention upholds four main principles, namely the survival, development, protection and participation of the children. Children in Malaysia are governed by two laws, for Muslim children, they are governed by Islamic Law- which falls under the State's jurisdiction in family matters and Islamic criminal law relating to issues such as gambling and the consumption of alcohol. Non-Muslim children are governed by civil laws. The Malaysian government has reserved eight Articles of the UNCRC which are as follows:

1. *Article 1* (Definition)
2. *Article 2* (Non-discrimination)
3. *Article 7* (Name and nationality)
4. *Article 13* (Freedom of Expression)
5. *Article 14* (Freedom of thought, conscience and religion)
6. *Article 15* (Freedom of association)
7. *Article 28(1)(a)* Free and Compulsory education at primary level
8. *Article 37* (Torture and Deprivation of Liberty)

The reservations were made because it was said that the UNCRC contravenes the interests of the Malaysian Constitution, legislation and cultural and religious practices.³²

Perhaps such reservations can be seen as an initiative to think ahead about what would be the best approach towards reconciling the contradictions that exist between the UNCRC and local interests, and at the same time help to maintain the harmony of this multi-racial country. Reviewing and reserving legislations and social policies that relate to children's

³¹ *Children's Bill of Rights for the Internet*. Available at:

<http://www.childnet-int.org/downloads/ICRA-Bill-of-Rights.pdf>, accessed on 21st February, 2006.

³² UN Code has liberal aims but lenient enforcement. *The New Straits Times*, 15th March, 1998.

rights, can do this. Rights are affected by the evolving capacities of the child, the responsibilities, rights and duties of parents and national law.³³ There have been three articles that have been removed through reservation by the government in accepting the UNCRC. The Malaysian government also reviewed its legislation on children to ensure that agendas on child protection are being dealt with comprehensively, which has seen the implementation of the *Child Act 2001*. What interests me are the three articles, *Article 13*- freedom of expression, *Article 14*- freedom of thought, conscience and religion and *Article 15*- freedom of association. The Malaysian government in accepting UNCRC has reserved these articles. Hence, how could these reservations being secured and protected when it comes to the usage of the Internet by Malaysian children?

4.1 Freedom of Expression.

According to *Article 13* of the *UNCRC*:

The child shall have the right to freedom of expressions, this right shall include freedom to seek, receive and impart information and ideas of *all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any *other media* of the child's choice. (Emphasis added).

Article 13(2) is to protect the rights and reputation of others and to protect national security and public order as well as the public health and morals. Undeniably, in moving towards an Information Society, information becomes an essential element for development and to put the Malaysian government's vision to be a developed country by the year 2020 into a reality. However, the words "all kinds" of information can be broadly interpreted when it comes to seek receive and impart information by children. Information must be sought and imparted with responsibility. Being invisible in the Internet, some children and young people feel that there is no surveillance and control and that they are totally free to do whatever they like. Such an assumption is definitely dangerous when children and young people disregard law, order and policy in

³³ *Article 5* of *United Nation Convention on the Rights of the Child*.

³⁵ Valentine, G. (1996). Angels and devils: Moral landscapes of childhood. *Environment and Planning D*:

exchanging information in cyberspace. Valentine (1996), argues that besides the vulnerable and innocent child who is regarded as passive and weak, there is also the dangerous child who is regarded as a delinquent, innately sinful and in need of control and discipline.³⁵ In the absence of supervision and guidance from parents, this dangerous child may create problems in the Internet. For instance, a London teenager was sentenced for hacking into the computer system of a US physics research laboratory and the juvenile told the police that he was unaware that the computers belonged to a government-funded research laboratory.³⁶ Hence, what should we understand from the juvenile's 'unawareness'? Did he indeed hack the laboratory unintentionally and accidentally?

Protectionists fear that children who are still in the developmental stage will be greatly influenced by harmful content such as information on how to make bomb or how to rape a child. In the US, the concept of "harm-on-minor" has initiated the government to introduce legislative controls on the content of the Internet by introducing the *Communications Decency Act 1996* which was struck off in *Reno I*³⁷ and a second law, the *Child Protection Act 1998*, which was again struck off as unconstitutional in *Reno II*.³⁸ In fact, harm to minors from exposure to erotica must be seen in moral terms as have been reported by the US Attorney General's Commission on Pornography:

For Children to be taught by these materials that sex is public, that sex is commercial, and the sex can be divorced from any degree of affection, love, commitment, or marriage is for us the wrong message at the wrong time.³⁹

The basis for the call for censorship as advocated by pro-censorship protectionists, was justified on the basis of Justice Brennan's statement in a US Supreme Court decision, "sexual speech conveying immoral or disapproved values- whether misogynist attitudes or acceptance of unconventional sex- should not be available to youngsters until they are

³⁶ N.a. (2000). British teen sentenced for hacking US research lab. *The Star*. 5th February.

³⁷ (1997) 117 S.Ct. 2329

³⁸ (3rd Cir 2000), 217 F,3d 162.

³⁹ US Department of Justice, (1986), *Attorney General's Commission on Pornography Final Report (the Messee Commission)*, Washington, DC: US Government Printing Office, p 303, p 344.

mature enough to evaluate and (presumably) reject them.”⁴⁰ The call for censorship is valuable, as we want to nurture moral values which we see as essential for the development of a child. However, Heinz argues that when morality becomes the basis for censorship, consideration should be given to other factors such as the premise of free-society and free-expression principles. She further argues that there are assumptions that children have lesser free speech rights and *Article 13* of the *UNCRC* has been considered as an impediment to legislation designed to restrict a minor's access to online speech.⁴¹

On the other hand, freedom of expression by children in the Internet should not be seen as a threat to morality and childhood *per se* as there are activities where children may benefit such as sharing their interest in a newsgroup or in a chat room. These activities can be seen as an opportunity to network and to promote their interests or express their opinions about their favorite artists, exchange views and experience interaction on a global level. In fact, there is strong evidence of the importance of technology in disseminating information that advocates the human rights of children, and indeed, a reliance on the good-quality, accurate and timely circulation of this information as being vital to the work.⁴² The Internet has been used by children's rights organizations as one of the mediums to deliver their messages, particularly in the context of urgent actions relating to the protection of children's rights. Furthermore, the wide range of activities in the Internet may enhance the development of writing skills amongst young child. Turkle (2005) has observed that a child as young as four who is exposed to the use of a computer may learn to write before being formally taught. However, there is some concern regarding the child's relationship with learning to write in this way, and their broader social development. Referring to Rousseau's statement that associates writing with moral danger in the most direct way,⁴³ Turkle says:

⁴⁰ Ginsberg v New York, (1968) 390 U.S.

⁴¹ 629Heins, M. (2001). Criminalizing online speech. In Wall, D.S. (ed). *Crime and the Internet*. London and NewYork: Routledge, p 107.

⁴² Hick, et. Al. (2001) Children's Rights and the Internet. *Annals of American Academy of Political and Social Science*, 575, May, p 69.

⁴³ Jean-Jacques Rousseau. (1996) Quoted in Turkle, S. (2005). *The second-self, computers and the spirit of Human Spirits*. Boston: MIT Press, p 92.

The computer has become the new cultural symbol of the things that Rousseau feared from the pen, *loss of direct contact with other people, the construction of private world, a flight from real things to their representations.* (Emphasis added)⁴⁴

Children's rights in term of getting information from the Internet should not be seen as a destruction of childhood itself, perhaps, the most crucial thing is how can this information mould these children into becoming adults? New strategies and policies are essentially needed by the Malaysian government to ensure the reservation of *Article 13* of the *UNCRC* could be monitored in the Internet. Every country has a different perception on the moral values and ethics when it comes to information. Islam is the religion of the country⁴⁵; local values are based on the teachings of Islam and eastern culture. It is difficult to censor websites, which fall under the categories that againts, the values and teachings of Islam and local culture. Therefore, knowledge plays an important role to value on the validity of information in the Internet. Furthermore, Islam has stressed the importance of investigating the source of information before accepting it full-heartedly. Hence, it is important that parents, guardians and educators should constantly monitor children's activities in the Internet and at the same time provide them with moral guidance. Hecht (2001) states:

Balancing the potential good against the potential evils of freedom of information on the Internet, in the context of world-wide concerns about child pornography and pedophile, requires the balanced safeguards be put in place to ensure *neither the individual interest, nor civic or societal interests are overwhelmed and sacrificed at the expense of the other.* (Emphasis added).⁴⁶

Although admittedly teachings of what is right and wrong in the Internet is challenging, children and young people embody the future of the country, hence, efforts should be

⁴⁴ Turkle, S. (2005). *The second-self, computers and the spirit of Human Spirits*. Boston: MIT Press, p 92.

⁴⁵ *Article 3 (1)* of the *Federal Constitution* states that Islam is the religion of the country but other religion may practice in peace and harmony.

⁴⁶ Hecht, M. E. (2001). *Freedom of Information in the Internet. Achieving a balance* in A. Arnaldo, C. (ed), *Child Abuse on the Internet, Ending the Silence*, Paris: UNESCO Publishing, p 99.

made to encourage our children to become good citizens who aware that no matter whether it is online or offline, there are limits to our freedom in using the Internet; that is does not infringe the right of other people and cause threat and destruction to national and worldwide security.

4.2 Article 14- Freedom of thought, conscience and religion.

This article clearly mentions that the government shall respect the right of the child to freedom of thought, conscience and religion, but that this freedom shall be read together with subsection (2) which mentions the rights and duties of parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. However, such freedom to manifest one's religion or beliefs may be subject only to such limitations as prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

At the first reading of this article, one may wonder what do thought, conscience and religion mean and why perhaps are such rights grouped together? Does the word thought relate to religious thought *per se*? If it is as regard to religion *per se*, such guidance must be confined strictly to the teachings of each religion. For Muslim children, their rights are clearly enshrined in the *Quran* and the *Sunnah*. Their rights are recognized from the beginning, while they are still in the womb and a child has a right to parentage which means that the child has a right to a name and identity, right to fostering or suckling, right to maintenance, custody and inheritance. As put by Awal (1999):

Islamic law is not an obstacle to the implementation of the UNCRC but the UNCRC may find Islamic law unacceptable. This may well be one of the reasons why Malaysia still insists on the eight reservations.⁴⁷

⁴⁷ Mohd Awal, N, A. (2002) Child Act 2001 How Farr Does it Conform to UNCRC? In Jamaluddin, S, Z, et. Al. (Ed). *Siri Undang-undang Mimi Kamariah, Akta Kanak-kanak 2001*. Kuala Lumpur: Universiti Malaya.p 230.

Furthermore, to apply freedom of religion to the practices of children is extremely dangerous and against the teachings of Islam, as parents are charged with moulding their children's religion. When it comes to the use of the Internet by children, what concerns me are the illegal or misleading information about religion itself and how children may misunderstand the teachings of religion itself. For example, in Marlboro, New Jersey, The New York Times reported that one now can just simply log on to perform his prayer virtually, before and after work. Further, a website known as islamicity.com offer Muslims the opportunity to perform hajj "virtually" to *Makkah*.⁴⁸ Zaleski (1999) in his book, *The Soul of cyberspace: How Technology is changing our Spiritual Lives*, illustrates how the Internet may be absorbed in the spiritual life of people today. Hence, should children be protected from such information and activities as provided for in the Internet since it deviates from the real teachings of the religion?

4.3 Article 15- Freedom of association.

This Article recognizes the right of the child to the freedom of association and of peaceful assembly. This Article is in line with *Article 9 of the Federal Constitution*. However subsection (2) states that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a *democratic society* for the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.

Association is not only confined to membership but to assemble peacefully. How about those associations in the Internet? Could meetings or chatting online fall under the freedom to assemble peacefully? Should a child as an Internet user have the freedom to join a newsgroup which is perhaps seen as threat to the country? Should we consider that these rights are akin to their rights to play as a means of self-exploration?

⁴⁸ Sulaiman. S, T.M, (2004). *Kedurjanaan Siber*, Kuala Lumpur, Utusan Publications & Distributions, p 28.

5. Discussions

Fortin states that discussion on the concept of rights of children provokes unease amongst many writers and practitioners.⁴⁹ The expression of “rights” must be treated with some caution, since many of the aspirations for children are not set out in the UNCRC and could arguably never be enforced as a legal right by individual children in the court. Though the UNCRC is not a law, it reflects the hopes of nations worldwide in dealing with arising issues or problems regarding children. Bainham (2005) argues that what is more important is the educative and symbolic effect of internationally agreed norms against which domestic standards must be measured.⁵⁰ However, cyberspace does not represent any specific place which can be said to be domestic; Internet users represent the diverse groups of people worldwide. Hence, in considering children's rights as enshrined in the UNCRC, caution should be made to ensure their application is balanced between the off-line and on-line worlds. In other words, children's rights in using the Internet should be read in line with the aspirations of the UNCRC and these rights should not be seen as undermining children.

In Canada, the “religious right” fear that the Convention means that children do not have to obey their parents- for instance, orders to turn off the television- or that children can now consent to sex with paedophiles.⁵¹ Despite the critics of the children's rights, the UNCRC is the most well-accepted international treaty.⁵² The Convention stands as a powerful symbol of a new perception of childhood, one that invites a reconstruction of childhood and that recognizes children's needs and children's capacities. As put by Martineau (1997), “Interpretating and applying the Convention in diverse cultural contexts is, however, problematic.”⁵³ Similarly, interpreting this Convention in the context of its applicability to cyberspace is additionally difficult due to the diverse population of Internet users and the borderless nature of the Internet.

⁴⁹ Fortin, J. (2003). *Children's Rights and the Developing Law*, op cit., n. 31 at 591.

⁵⁰ Bainham, A. (2005). *Children and the Modern Law*. (3rd Edition), UK: Family Law, p 77.

⁵¹ Martineau, S. (1997). *Reconstructing Childhood: Toward a Praxis of Inclusion*. In McGillivray, A. *Governing Childhood*, Aldershot: Dartmouth, p 234.

⁵² Alderson, P. (2000). UN Convention on the Rights of the Child: Some Common Criticisms and Suggested Responses. *Child Abuse Review*, Vol 9: pp 439-443.

⁵³ Martineau, S. (1997). *Reconstructing Childhood: Toward a Praxis of Inclusion*, op cit., n 52.

The Malaysian government is legally bound to follow policies that are in conformity with the general and specific obligations of the UNCRC. The reservations being made to eight principles enshrined in the UNCRC should not be seen as a rejection by the government of the UNCRC, but as a means to accommodate paramount considerations such as the local circumstances of the country. The government sees such reservations as necessary to protect the best interest of the Malaysian children. However, when it comes to cyberspace, such reservations are deemed difficult to deal with. The reality is that it is especially difficult to draw a line between childhood and adulthood in cyberspace, except in commercial websites where a credit card is required for age authentication. Minow (1996) argues that legal conceptions are insensitive to the relationships children have and those they need, and that children are not the real focus of various laws; law may in fact mix some concern for children with other concerns, but children are not the central concern.⁵⁴ Hence, there is a need to address what are actually the needs of children in using the Internet as a new medium of communication and education. It is suggested that the relevant authorities, such as the Ministry of Education and the related agencies to children and young people, should supervising the reservations made to the UNCRC closely. The campaign to use the Internet positively is a milestone in achieving one of the objectives of the *Communication and Multimedia Act 1998* - to grow and nurture local information resources and a cultural representation that facilitates the national identity in the context of global diversity. Different countries provide different mechanisms for governing the Internet due to different legal concepts and traditions. Local circumstances cannot be simply replaced and historically, during the British Colonisation in Malaya (Malaysia), matters pertaining to Islamic Family law and local traditions were rarely interfered with by the British. Perhaps in cyberspace, local circumstances, traditions and practice ultimately play a role in shaping the information society in Malaysia.

Censoring the Internet is generally an initial stage in controlling the flow of harmful information to children and young people but it could be a nightmare for law makers and law enforcers given the mushrooming of websites and the nature of the Internet. In fact,

⁵⁴ Minow, M (1996) Rights for the Next Generation: A Feminist Approach to Children's right. In Ladd, R. (Ed). *Children's right re-visioned. Philosophical readings*, pp 43-45.

there have been movements in the US to open a new domain especially designed for children.⁵⁵ Yet, to implement such action in Malaysia is very difficult, as currently there is still a digital gap in the penetration of the Internet across the country. As put by Grabosky & Smith (2001)

Over-regulation, or premature regulatory intervention may run the risk of chilling investment and innovation. Given the increasingly competitive nature of global market-place, governments may be forced to choose between paternalistic imperatives and those of commercial development and economic growth.⁵⁶

Again, there must be a balance in choosing between paternalistic imperatives and economic growth; the balance should not jeopardize local cultures, beliefs and circumstances. Promoting the rights of children is not about challenging parents of guardian's right, but as puts by Lansdown " accepting that, children, even very small children, are entitled to be listened and to be taken seriously".⁵⁷ Promoting the positive usage of the Internet without getting any feedback from children and young people is not balance in the sense they are the target group of the promotion.

Negative media reporting about the Internet and children in Malaysia can be related to early theories constructing media as a potentially harmful domain capable of eliciting negative or anti-social consequences. This belief remains at the heart of popular or mainstream discourses.⁵⁸ Philip Jenkis (1992) suggests that any offence, particularly those that deviate from the moral consensus, is made eminently more newsworthy if children are involved.⁵⁹ Media treatment of issues relating to children rely heavily on simplistic generalizations of children, the idea that children are products of nature of nurture leads media concern.⁶⁰ Yet, to interrelate the escalating numbers of juvenile rape

⁵⁵ Mc Afee, A. (2003). Creating Kid-Friendly Webpace: A Playground Model for Internet Regulation. *Texas Law Review*, Vol 82, Number 1, November, p 201.

⁵⁶ Grabosky, Peter and Smith, R (2001). Telecommunications fraud in digital age. In Wall, D. (Ed). *Crime and the Internet*. London: Routledge.

⁵⁷ Lansdown, G. (2001). Children's welfare and children's rights. In Foley, M, et. Al. *Children in society, contemporary theory, policy and practice*, Palgrave: The Open University, p 95.

⁵⁸ Jewkes, Yvonne. (2004). *Media & Crime*. London: SAGE Publications, p32.

⁵⁹ Jenkins, P. Quoted in Jewkes, Y. (2004). *Media & Crime*. London: SAGE Publications Media, pp 56-57.

⁶⁰ Davis, H, et, al. (1997). The Demonization of children and young people. In Scraton, P. 'Childhood' in

and murder cases in Malaysia to the influence of the Internet is baseless as there is no evidence supporting the relation of information in the Internet and these juvenile's crimes.

6. Conclusions

Popular fears about the negative effects of the Internet on our children and young people in Malaysia is not a new phenomena as these fears can also be seen as a global phenomena. However, early and consistent prevention should be taken to ensure that this popular fear will not materialize. Rights of children to participate in the Internet should be seen as a positive development in recognizing the competency of children with computers and the Internet. Despite the fears discussed above, and reservations to certain rights of Malaysian children, such incidents should not be seen as discouraging but as motivations in bringing up children who continue to cherish local values in a global society.

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