

SEXTING AMONG CHILDREN: DIFFERENCES IN LAW BETWEEN MALAYSIAN, ENGLISH, AND AMERICAN LAWS

*Syahirah Abdul Shukor**
syahirah@usim.edu.my
Universiti Sains Islam Malaysia

Noor Dzuhaidah Osman
noordzuhaidah@usim.edu.my.
Universiti Sains Islam Malaysia

ABSTRACT

The recent case of *Sugarbook* has sparked concerns among the public who are worried about young girls using applications on the Internet. Risky behaviors and worrying trends make online Internet users vulnerable to danger. Risky behaviors exhibited by youth such as distributing sexually explicit images and sharing sexually provocative photographs will not only expose them to danger but also be regarded as contravening the laws. There are also reported cases of revenge pornography among teenagers in local media. Despite the lack of research on this new trend of communication among children and young people in Malaysia, daily local newspapers have released worrying news of how relationships built on the Internet can turn into tragedies for innocent young people, especially teenagers and children. This paper discusses the possible meaning of sexting, the current laws, and the reported cases on sexting, particularly those captured in Malaysian media. This paper used secondary data and information gathered from articles in refereed journals to understand the legal differences between Malaysia and other jurisdictions, namely the USA and the UK. This paper suggests that besides the importance of educating youth to create legal awareness regarding proper use of the Internet, there is an urgent need to revisit the relevant legislations and practices on the governance of sexting in order to protect children and teenagers.

Keywords: Sexting; Internet governance; child protection; Malaysian laws

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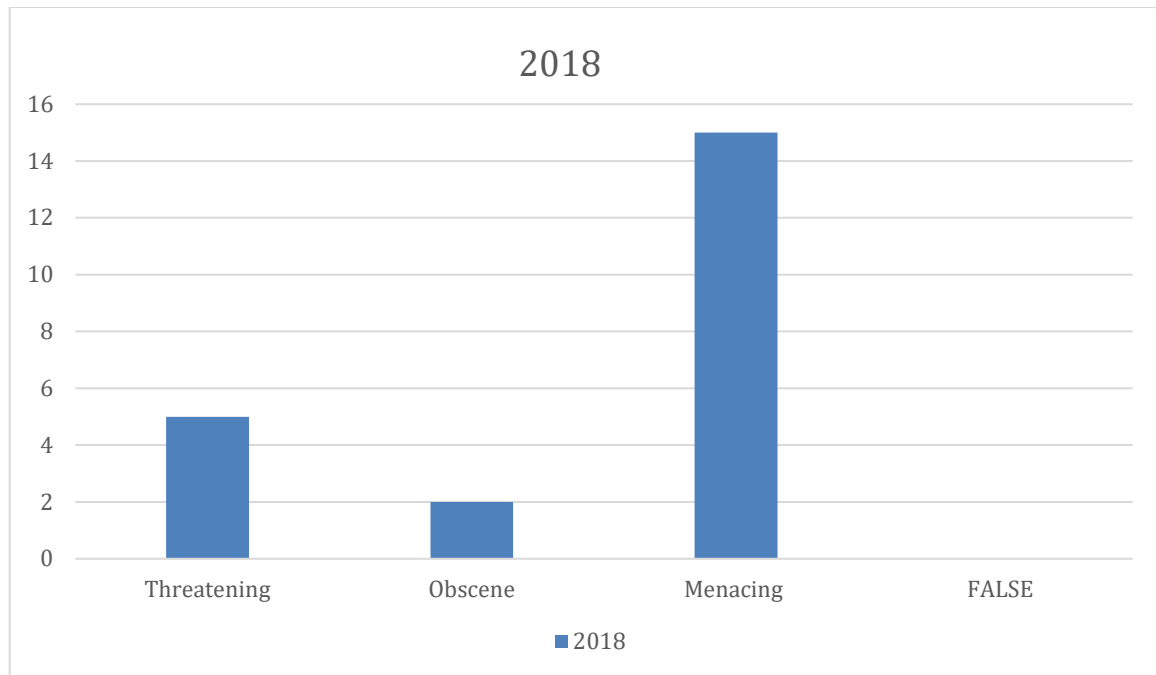
INTRODUCTION

Real-time communication using smartphones can be done via applications such as WhatsApp and Telegram. In 2018, it was reported that almost 50% of teenagers were involved with sexting, for instance, by exchanging nude pictures via the Internet (The Star, 2018). Sexting is commonly considered risky behavior, and discourse on sexting usually centers on its potential harm. Generation Alpha is known as experts in using the smartphone: they take selfie or wefie pictures of themselves and upload those pictures on social networking websites to be shared with the public. Youth engagement in inappropriate content on the Internet is a huge public concern. Thus, Bowrey (2010) argues for more serious, critical thinking about information and communication technology (ICT). Exposure to online violence can be dangerous to children and young people due to the risk of misuse by them. A regional study released an overview of 17 Asian countries' legislative responses to online child abuse and exploitation with a focus on activities related to child pornography (also known as "child abuse images"), online grooming, and cyberbullying (The World Bank and the International Centre for Missing & Exploited Children, 2015). There are concerns regarding the normalization of teenagers and young people who use online dating applications for sexting. These concerns have given rise to the thinking that what is regarded as illegal offline should also be considered illegal online. Furthermore, the worrying trend occurring on the Internet reflects a possible withering of morality among the young generation and a tendency to normalize what is prohibited by society. Moreover, social media is becoming the lifestyle of Malaysian youth (Yee, Hassan, & A. Rahim, 2019).

LITERATURE REVIEW: MONITORING AND SUPERVISING INTERNET ACTIVITIES IN MALAYSIA

In Malaysia, the two agencies responsible for monitoring cyber activities are the Malaysian Communication and Multimedia Commission (MCMC) and Cybersecurity Malaysia. MCMC's vision is to nurture digitally literate citizens who can use the Internet wisely. Initiatives such as *Klik Dengan Bijak*® (KDB) and Malaysia ICT Volunteer (MIV) have been held to enable Malaysians to understand the media industry and its content and impact, distinguish between reality and perception, understand oneself, and inculcate the ability to filter and integrate meaningful information. The Economic Planning Unit (EPU), which is under the Prime Minister's Department, launched Malaysia Digital Economy or MyDIGITAL in 2021 as a critical enabler in realizing the Twelfth Malaysia Plan 2021–2025 (RMK12) towards achieving the country's vision of 'Wawasan Kemakmuran Bersama 2030'. One of the aims of MyDigital is to build a trusted, secure, and ethical digital environment. Thus, efforts must be made to increase awareness of cybersecurity and ethical usage of the Internet (EPU, 2021).

One of the measures implemented by the MCMC to protect consumers in Malaysia is blocking or preventing access to websites that are harmful and in violation of the provisions of the country's written laws. The MCMC's Enforcement and Investigation Division (EID) will conduct thorough investigations of all complaints to ascertain if there were any offences committed regarding service quality, compliance with licensing requirements, and guidelines set by the MCMC. The figure below summarizes the reports received by the MCMC in 2018 from netizens, categorized into threatening, obscene, menacing, and false reports.



Source: Malaysian Communications and Multimedia, 2020



Source: Malaysian Communications and Multimedia, 2020

The Ministry of Health (2014) defines sexting as the act of sending pornographic photos, messages, or videos using a mobile phone. It includes posting provocative or sexual photos on the Internet. Some teens resort to sexting voluntarily, while others do it at the urge

of boyfriends or girlfriends or friends. Sometimes, photos are taken without one's knowledge and disseminated to others. This is also regarded as sexting. The distribution of sexual images in social media without one's consent can be caused by 'revenge porn'. In some cases, it leads to sextortion especially when the sexual activities are recorded and used to extort the partner. One striking feature of the sextortion problem is nobody knows how serious or widespread the problem is due to a lack of reported data on this matter in Malaysia. The question that arises is whether the government should introduce any guideline or module in schools to children and young people regarding safe Internet usage. At the same time, another question raised is whether more laws are needed to protect children, specifically on using the Internet.

Since the first lockdown in March 2020 due to the COVID-19 pandemic, an increasing number of sexting and sharing of nude pictures has been reported, with Malaysia occupying the fourth spot on the list. Pornhub has also released a few figures from their statisticians who studied the change in behavior of users after the outbreak of COVID-19 (Ker, 2020). Even before the pandemic, research had been conducted to identify the possible risk posed by online activities.

The research findings by Microsoft (2018) that were released in a leading local newspaper, *Berita Harian* in November, 2018 revealed that Malaysians were exposed to five types of risks associated with online activities. Respondents reported of receiving sexual or obscene messages (30 percent), online harassment (28 percent), something offensive (22 percent), deception (20 percent), and solicitation of unwanted relationships (18 percent) (Halina Mohd Noor, 2018). Similar findings were obtained in the research conducted by Than Siew Ming and others (2017), which interviewed students from three schools to examine texting, identity theft, and pornography among school children. The study also explored whether social networking websites invaded the privacy of these children.

Due to the increase in cyber-related threats concerning children in the ASEAN region and the rise in the number of Malaysian cyber citizens falling victim to various cybercrimes, CyberSecurity Malaysia (CSM), an agency under the Ministry of Science, Technology and Innovation, has decided to develop awareness modules for school students in both primary and secondary levels. Thus, a National Cybersecurity Awareness Baseline Study (2016) was conducted to identify the level of cybersecurity awareness among school students in Malaysia. The Ministry of Education (MoE) in collaboration with CSM plans to introduce the National Cyber Security Awareness Module at 300 schools nationwide (Sharon, 2020).

A book titled *Sexting and Young People* by Thomas Crofts and others (2015) highlights the relationship between children and sex. It poses a wide range of thorny questions for late modern societies, increasingly so in the light of access to, and use of, new technologies particularly by the young. The book tackles this controversial topic and subjects it to thoughtful and thought-provoking analysis. Another book titled *Sexting and Cyberbullying* by Shaheen Sardar (2015) examines the line between online joking and legal consequences. It offers an analysis of reactive versus preventive legal and educational responses to these issues using evidence-based research with digitally empowered kids. Shaheen Shariff highlights the influence of popular and rape culture on the behavior of adolescents who establish sexual identities and social relationships through sexting. She argues that there is a need to move away from criminalizing children and toward engaging them in the policy development process, and she observes that important lessons can be learned from constitutional and human rights frameworks. She also draws attention to the value of children's literature in helping the legal community better understand children's moral development—and the judicial approaches and biases in assessing children's culpability—and in helping children clarify the line between harmless jokes and harmful postings that could land them in jail. Thus, it is crucial to draw a line as to when an online behavior is a crime and not. Caution should be in place in implementing sexting legislation because if the laws are poorly crafted, the possible outcome might not be as intended.

Studies have shown that sexting is associated with incidences of increased sexual behavior. In the United States (USA), state laws vary widely from decriminalization to misdemeanor charges or prosecution with harsh sentences for child pornography. Teen behavior and digital invention have overtaken the development of new laws, and this scenario may lead to dire legal ramifications for teens. There have been calls for uniformity of law in cases involving sexting by underaged youth (see O'Connor et al., 2017). Separating consensual sexting from nonconsensual sexting and actual child pornography is a critical next step for law enforcement agencies and policymakers to catch up with technology. In Malaysia, sexual actions by those below the age of majority are regarded as criminal even though it is a consensual relationship. For Muslim teenagers, the prohibition of sex before marriage should be upheld by the law, and for non-Muslims, abstinence from sex out of the wedlock should also be the way forward in protecting the future of the minor in Malaysia.

The MCMC is looking into more areas to be included in its Child Online Protection (COP) awareness and educational modules, given that the age of Internet users is getting younger by the day. In an opening remark in a webinar on Child Online Protection by UNICEF and the MCMC, the MCMC's Chief Regulatory Officer, Zulkarnain Mohd Yasin Zahri (Bernama, 2021) said:

It's important if we are serious in protecting our children from violence, exploitation, and abuse associated with digital technologies. Communication technologies will only grow by leaps and bounds...the same goes with the threats, be it emerging threats or the same old ones, the only foolproof way of dealing with these threats is if we are resilient enough.

In the same webinar, Professor Dato Noor Aziah Mohd Awal, the Children's Commissioner of the Human Rights Commission of Malaysia (Suhakam) lauded the government's fast action in shutting down a 'sugar baby' dating site and an app called *Sugarbook* recently. Noor Aziah urged the government to establish a national data system to monitor Internet usage by children, including their category and age, as well as the percentage of risks and harms of them using the same (Bernama, 2021a). The harmful effect of such application on young girls should be taken seriously by the authorities. The study by Eliza and Saodah (2020) suggests focusing on nurturing the morality of Malaysian youth to minimize the total freedom of expression where harmful information is being disseminated unnecessarily, especially online.

PROBLEM STATEMENT

Undeniably, there are other social issues such as online pornography and sextortion that arise from the Internet usage. The adage of what is illegal offline should be illegal online as echoed in the Content Code issued by the MCMC should be an eye-opener that laws still govern the activities on the Internet despite the Internet's nature. The laws must evolve to address unforeseen issues including sexting as the Internet has become a tool for communication and the means for disseminating prohibited sex activities. This scenario raises inter alia legal issues such as whether sexting or sexual activities through the Internet should be considered an offence under the Malaysian laws.

SCOPE OF THE STUDY

The scope of this study is limited to the legal development of laws related to sexting concerning children and young people in Malaysia. A child refers to a person under 18 years old as defined

in Section 2 of the Age of Majority Act 1974 and the United Nations Convention on Child's Rights (Article 2). A comparison study is applied to examine the progress of other countries such as the USA and the United Kingdom (UK) in dealing with sexting legislation.

SEXTING LAWS IN MALAYSIA AND OTHER JURISDICTIONS

Laws for criminal sexual offences are generally provided for in Malaysia's Penal Code Act 574 (Penal Code). In the Penal Code, rape is defined as nonconsensual sexual intercourse or consensual sexual intercourse by causing fear of death or hurt to the woman. Sex with or without consent with a child under the age of 16 years is considered statutory rape. Chapter XVI of the Penal Code sets out the sexual offences that one can be prosecuted for in Malaysia. The Sexual Offences Against Children Act came into force in July 2017 and makes the following activities offences if they involve victims, both Malaysian citizens and non-citizens, below the age of 18:

- a) Making, possessing, distributing, seeking, and profiting from child pornography;
- b) Withholding information on sexual crimes against children;
- c) Physical sexual acts including touching a part of a minor's body, making a minor touch any part of another person's body, or making the minor touch his or her own body without intercourse;
- d) Non-physical sexual grooming such as carrying out sexual activities in front of a minor;
- e) Non-physical sexual assault including following, watching, or contacting a minor for sexual purposes; and
- f) Making requests for a minor to exhibit his or her own body or body parts.

Section 211 and Section 233 of the Communications and Multimedia Act 1998 provide that it is an offence to send obscene or offensive content with the intention to annoy, abuse, threaten, or harass the other person. Where the victim is a minor, the perpetrator may be charged under Section 293 of the Penal Code which makes it illegal for the sale, let to hire, distribution, exhibition, or circulation of obscene objects or documents to any person under the age of 20 years.

The table below shows the related provisions and offences provided under the Malaysian laws for sexual offences.

Provisions	Offences
Section 292 of the Penal Code	It is illegal to distribute obscene material. The punishment is a maximum of three years' jail, a fine, or both.
Section 293 of the Penal Code	<p>Sale, etc., of obscene objects or documents to young person.</p> <p>Whoever sells, lets to hire, distributes, exhibits, or circulates to any person under the age of twenty years any such obscene object or document as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.</p>

Section 382 of the Penal Code	Extortion where the punishment is up to 10 years' imprisonment, a fine, whipping, or any two of those under Section 382.
Section 509 of the Penal Code	For words or gestures intended to insult the modesty of a person, the punishment is up to five years' jail, a fine, or both.
Section 11 of the Sexual Offences against Children Act 2017	<p>Offences Relating to Child Grooming</p> <p>Sexually communicating with a child</p> <p>11. (1) Subject to subsection (3), any person who— <i>(a)</i> sexually communicates with a child; or <i>(b)</i> encourages a child to sexually communicate, by any means, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding three years.</p> <p><i>Sexual Offences against Children</i></p> <p>11</p> <p>(2) For the purposes of this section, a person is said to sexually communicate if— <i>(a)</i> the communication or any part of the communication relates to an activity that is sexual in nature; or <i>(b)</i> any reasonable person would consider any part of the communication to be sexual.</p> <p>(3) No person shall be convicted of an offence under this section if the communication is for education, scientific or medical purpose.</p>
Section 14 of the Sexual Offences against Children Act 2017	<p>Physical sexual assault on a child.</p> <p>Any person who, for sexual purposes— <i>(a)</i> touches any part of the body of a child; <i>(b)</i> makes a child touch any part of the body of such person or of any other person; <i>(c)</i> makes a child touch any part of the child's own body; or <i>(d)</i> does any other acts that involve physical contact with a child without sexual intercourse, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding twenty years and shall also be liable to whipping.</p>
Section 15 of the Sexual Offences against Children Act 2017	<p>Non-physical sexual assault on a child.</p> <p>Any person who— <i>(a)</i> for sexual purposes</p>

	<p>(i) utters any word or makes any sound, or makes any gesture or exhibits any object or his body or any part of his body with the intention that such word or sound shall be heard, or such gesture or object or body or part of his body shall be seen by a child;</p> <p>(ii) makes a child exhibit the child's body or any part of the child's body so as it is seen by such person or any other person; or</p> <p>(iii) repeatedly or constantly follows or watches or contacts a child by any means;</p> <p>(b) threatens to use any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of a body of a child or any part of a body of a child or of a child engaged in an activity that is sexual in nature;</p> <p>(c) engages in an activity that is sexual in nature in the presence of a child;</p> <p>(d) causes a child to watch such person or any other person engaging in an activity that is sexual in nature;</p> <p>(e) causes a child to watch or hear any representation in whole or in part, whether visual, audio or written or the combination of visual, audio or written, by any means including but not limited to electronic, mechanical, digital, optical or magnetic means, or manually crafted, or the combination of any means, of such person or any other person engaged in an activity which is sexual in nature; or</p> <p>(f) makes a child engage in an activity that is sexual in nature, 14 Laws of Malaysia Act 792 commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding twenty thousand ringgit or to both.</p>
<p>Section 211: Prohibition on provision of offensive content of the Communications and Multimedia Act 1998 (Act 588)</p>	<p>(1) 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.</p> <p>(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of RM1,000 for every day or part of a day during which the offence is continued after conviction.</p>
<p>Section 233: Prohibition on provision of offensive</p>	<p>233. Improper use of network facilities or network service, etc.</p>

<p>content of the Communications and Multimedia Act 1998 (Act 588)</p>	<p>(1) A person who —</p> <p>(a) by means of any network facilities or network service or applications service knowingly—</p> <p>(i) makes, creates, or solicits; and</p> <p>(ii) initiates the transmission of, any comment, request, suggestion, or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or</p> <p>(b) initiates a communication using any applications service, whether continuously, repeatedly, or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, commits an offence.</p> <p>(2) A person who knowingly —</p> <p>(a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or</p> <p>(b) permits a network service or applications service under the person 's control to be used for an activity described in paragraph (a), commits an offence.</p> <p>(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction</p>
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The Children’s Act (Amendment) 2016 states that parents’ and guardians’ awareness is crucial and must be boosted in tackling issues of neglect, carelessness, and abuse of children, including security in the cyber world. At the international level, Malaysia has adopted the primary international tool serving as a guidance, which is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography¹³ (OPSC).

The above-mentioned laws provide protection and prevention to sexual offences against children. In the case of *Syed Naharuddin Bin Syed Hashim v Etiqa Takaful Berhad* (Award No.: 3143/2018) involving the Head (Agency Management) of the company who was involved in sexual grooming, an anonymous email was sent to the company alleging that two officers of the company had been operating as sexual predators and targeting girls as young as 13 years old. It was claimed that the claimant used the pseudonym of “K-Boy” to carry out meetings with girls at Seri Pacific Hotel in Kuala Lumpur. It was also alleged that the claimant’s conversations were recorded and featured in an expose by the Star newspaper.

An investigation by the company revealed that two video recordings featuring the claimant had gone viral according to the newspaper expose. In an interview done during the company's investigation, the claimant voluntarily admitted amongst others, that:

- a) He was the individual using the pseudonym "K-Boy";
- b) He met with an undercover journalist posing as a 15-year-old girl. At the meeting, he had a conversation with her at the hotel lobby where he spoke of his sexual exploits with girls as young as 13 years old and tried to persuade her to go to his hotel room but to no avail; and
- c) On another meeting with her, he took the journalist to his hotel room which was booked by the company in conjunction with a program for its agency members. They talked for about 30 minutes wherein he allegedly admitted that he talked with her regarding his sexual exploits and that the substance of the conversation was sexually explicit.

The company suspended the claimant on the basis that the expose had tarnished the image and reputation of the company. After the investigation, the company decided that the claimant's recorded actions in the expose were extremely prejudicial to the interest of the company and terminated him with immediate effect. The claimant argued that his dismissal was unfair for several reasons, namely that the circulated recordings had his image blurred and nothing in the footage could be traced back to the company. It was thus argued that the company's image could not be tarnished. The claimant also alleged that his alleged sexual exploits as communicated to the journalist were mere fantasies, and there was no proof that such exploits did take place.

Upon assessing the evidence, the Court held that due to the power of social media, there is a presumption that the public knows or could have known that the claimant was working for the company. The company was also alerted to the claimant's action upon being contacted by the newspaper. Since the claimant held a senior position, the Court held that he had a duty to always safeguard the reputation of the company. As such, his dismissal was just and with cause.

Another issue involving the distribution of pictures that might be in breach of a person's privacy has also been highlighted by the law. In Malaysia, the civil law on the invasion of privacy is on firm ground after the Court of Appeal delivered its landmark decision in *Maslinda Ishak v. Mohd Tahir Osman & Ors* [2009] 6 CLJ 653. In this case, a guest relations officer (GRO) was photographed easing herself in a truck by RELA (People's Volunteer Corps) personnel after the GRO was detained in a raid conducted by JAWI (Federal Territories Islamic Religious Department) at a club in 2003. The GRO filed a claim against the RELA personnel, RELA director-general, JAWI director, and the government. She was awarded damages by the court.

In another High Court case, *Lee Ewe Poh v. Dr. Lim Teik Man & Anor* [2010] 1 LNS, a doctor (the defendant) had taken a picture of the plaintiff's anus during a medical procedure without informing her. The doctor's reason for taking the picture was for medical purposes, and he claimed that taking photographs during a medical procedure without the consent of the patient is a normal practice. The judgment of the Court of Appeal in *Maslinda Ishak's* case was referred by the High Court and it was held that invasion of privacy is actionable in Malaysia.

Different countries seem to take different approaches in regulating Internet content and communication. Coroneous (2008) highlights three factors leading to Internet content regulation, namely:

- (a) Cultural values and institutions within a country's jurisdiction in that may could include the traditional media,

- (b) The ease with which political debate can actually be translated into new legislation, and
- (c) The existence of constitutional guarantees such as freedom of expression and the extent to which new laws can be enacted will survive a constitutional challenge.

The promulgation of the Sexual Offences Against Children Act 2017 [Act 792] reflects the consensus among the government, opposition parties, and non-governmental organizations in facing the risk associated with the Internet towards children and young people. Thus, the political debates leading to the new legislation in regulating online grooming is a step in supervising and monitoring children's activities on the Internet. The political debates that took place in Malaysian Parliament were translated into new legislation, i.e., the Sexual Offences Against Children Act 2017 [Act 792]. An article by Cooray et al. (2020) highlights the viability of harsher and strict sentencing policies for sexual offenses to reduce the harm caused to children from exposure to illegal and harmful material online due to the technical difficulties of regulating the material on the Internet. They further suggested that in the absence of technical measures to reduce the material that is harmful to children online, harsher penalties could be one measure to reduce online sexual-based violence against children.

Najwa Rosli and others (2019) found that although the laws are seemingly extensive and covered in various legislations such as the Sexual Offences Against Children Act 2017, Criminal Procedure Code [Act 593], Penal Code [Act 574], and the Child Act 2001 [Act 611], there exist inconsistencies both in terms of the definition and their purported applications that may hamper successful prosecution and effective enforcement. In addition to the introduction of laws to prevent illegal and harmful activities that might harm children and young people, a concerted effort and consistency in implementing and enforcing the laws are crucial to ensure the success of these laws.

The Attorney General Department, outline a comprehensive guideline entitled *Media Social Wrongs: Manual for Investigation and Prosecution* for prosecutors, investigation officers, and forensic officers to highlight the importance of evidence in prosecuting wrongs which might involve electronic and social media application Mohd Sophian Zakaria and Akmal Hamdy Baharudin (2021) . The emerging legal awareness of wrongdoings on the Internet shows how serious the law might response to harmful and illegal activities on the Internet. The ASEAN Declaration on Child Online Protection and Recommendations from the regional meeting in February 2020 provides guidance for the development of a child online protection roadmap. Besides that, the review of the National Child Policy also includes a review of the Child Online Protection Policy and Action Plan (2015–2020) (MCMC-UNICEF, 2020).

During a talk organized by the MCMC and UNICEF in March 2020, the Government had identified gaps in the existing policies and the plans of action that must be addressed. She further mentioned the new policy was expected to harmonize with other recent law reforms affecting children that are overseen by other government agencies (MCMC-UNICEF, 2020). The fundamental issue that needs to be addressed is, since sexting and sexual activities on the Internet are illegal and harmful for children and young people, how will the authorities monitor these activities?

Assistant Commissioner of Police Siti Kamsiah Hassan, Principal Assistant Director, Sexual, Women, and Child Investigations Division (D11), Royal Malaysian Police, said that the Royal Malaysian Police had established a specific unit called Malaysian Internet Crimes Against Children to highlight the online sexual exploitations occurring in the country. This unit supports the division's five principal functions of investigation, emotional support for victims, advocacy, crime prevention, and awareness, and the provision of focal points on key issues (MCMC-UNICEF, 2020). It is submitted that continuous efforts must be taken in which beyond policymakers dealing with sexting, parental responsibility should also be included in charting

child policies during this digital age (see Syahirah Abdul Shukor, 2016, which highlights the parental responsibility law in dealing with child protection on the Internet as enshrined in the Child Act 2001).

SEXTING LAWS IN OTHER JURISDICTIONS

Sexting among young people is a complex issue as it involves a wide range of social and legal concerns connected to sexting (2018). Our analyses revealed considerable variations both in the USA and international law, with some jurisdictions relying on archaic child pornography statutes to prosecute teenage sexting cases and others developing new, extensive legislation that addresses various types of online interactions (e.g., sexting, revenge porn, and cyberbullying) (O'Connor et al., 2017). There has been a movement to legislate sexting on the Internet. The case of *Miller v. Mitchell* [2010] was the first to challenge the constitutionality of prosecuting teens for their digital sexual expression. In 2008, the District Attorney of Wyoming County in Pennsylvania presented teens suspected of sexting with a choice: either attend an education program designed by the District Attorney in conjunction with two other agencies or face felony child pornography charges. The plaintiffs sued to enjoin the District Attorney from bringing criminal charges in retaliation for their refusal to attend the education program—an act they allege is constitutionally protected—and immediately filed a motion for preliminary injunctive relief. The District Court granted their motion. While the case was on appeal, the District Attorney determined that he would not file criminal charges against two of the three plaintiff minors. As to the remaining minor, Nancy Doe, and her mother, Jane Doe, they had shown a likelihood of success on the merits of their constitutional retaliation claims, and therefore they were entitled to preliminary injunctive relief. This incongruity creates a complex landscape for teenagers in determining the legality of their sexting behavior.

In the UK, the question is whether the existing law is adequate to deal with the distribution of pornography on the Internet; the country has seen an amendment made to the Obscene Publications Act 1959 and the Protection of Children Act 1978 (Rowland, et, al, 2017). A new offence was introduced in 2008 to include extreme pornography as seen in Section 63 of the Criminal Justice and Immigration Act 2008. Based on the emerging cases and trends on the Internet, it is tricky to draw a line between what should and should not be criminalized and to determine the extent to which the law should interfere. Hence, it also begs us to think between the rule of law and the rule of technology. This complex issue cannot be easily resolved without an understanding of how rules of law and technology work in facing with the possible illegal and harmful activities that might be embarked by children and young people while using the Internet.

CONCLUSION

Compared to the UK and the USA, Malaysia has only recently passed laws pertaining to protection of children online with the gazetting of the Sexual Offences Against Children Act 2017, which witnessed the first offence related to children and usage of the social media. Thus, Malaysia now has the laws to prosecute irresponsible Internet users who misuse the Internet as a platform to allure innocent children and young people to illegal and harmful activities on the Internet.

Laws related to illegal activities such as sexting have been developed earlier in the UK and the USA than in Malaysia. In Malaysia, the Sexual Offences Against Children Act 2017 was passed due to the political will of the government and the opposition to protect children and young people. However, more research needs to be done to ensure the legal provisions are effective and to improve the practice of handling sexting or sexual activities via the Internet.

Comparisons with other jurisdictions such as the UK and the USA regarding how they deal with sexting may not be adequate for the Malaysian authorities as the local circumstances of Malaysian children and young people must also be addressed by the policymakers. In addition, Muslims in Malaysia are governed by shariah laws. However, the shariah laws are silent on online crimes related to religion (Bernama, 2021b), and there is an urgent need to ensure what is applicable offline for shariah offences is also applied online.

The current trend of children and young people using the Internet is commendable as this new generation also needs exposure to the new technology. However, they also need to know how to use the Internet ethically and correctly as there is always a boundary in using the technology. Internet usage must come with responsibility, and as far as children and young people are concerned, such responsibility may involve a long process to instil. Laws can be used to discipline netizens provided there is firm and strong enforcement by the authorities along with public awareness.

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About the authors

Syahirah Abdul Shukor is a Senior lecturer at Faculty of Syariah and Law, Universiti Sains Islam Malaysia. Her areas of specialization: cyberlaw, child law, legal education and comparative law. She obtained her PhD from Keele University, United Kingdom (2009) Master of Comparative Law (2000) and LLB(Hons) from the International Islamic University of Malaysia.

Noor Dzuhaidah Osman is a Senior lecturer at Faculty of Syariah and Law, Universiti Sains Islam Malaysia. Her areas of specialization: Biosafety Law, International Environmental Law, Bioethics, Regulation & Governance, Environmental Biosafety, Technology Regulation, Shariah Law, Agricultural Law. She obtained her LL.B (Hons) (Sheffield Hallam), LL.M (UKM), PhD (Nottingham Trent), CLP (Malaya), DSLP (International Islamic University of Malaysia).