

A STUDY COMPARATIVE CYBER PORNOGRAPHY AND PENAL CODE BETWEEN IRAN AND MALAYSIA

Maasoomah Najmadini*, Batool Pakzad, Nourooz Kargari

Department of Law, College of Law, Rafsanjan Science and Research Branch, Islamic Azad University, Kerman, Iran

Corresponding authors: (Email: destiny.m4553@gmail.com)

ABSTRACT

The purpose of this study was comparative cyber pornography and penal Code in Iran and Malaysia. Sociological theories of deviant behavior have not been systematically applied to the problem of who uses and who does not use cyber pornography on the Internet. This phenomenon is particularly wide spread in human societies have grown in recent years and scientists and politicians need to have precise control. Most victims cyber pornography are women and children. The research is descriptive analytical method (the library) by use of legal and non-legal books, archival sources, Internet resources, magazines, letters, legal sites. The results of this research showed that in Malaysia is young pornography (persons under 20 years) and child (persons under 14 years) a crime. Iran has tried that approach and criminalization of a complete ban on pornography adopt. It is essential that the international obligations, child pornography segregated from adults and dealing with child pornography made more stringent.

KEY WORDS: *Cyber pornography, Penal code, Iran and Malaysia*

Introduction

How pornography should be regulated is one of the most controversial topics relation to the Internet in recent years. The widespread availability of pornography on the Internet has stirred up a moral panic shared by the government. Law enforcement bodies such as the police. Prosecutors and judges along with the media in general. There have been many attempts to limit the availability of pornographic content on the Internet by governments and law enforcement bodies all around the world. Sociological theories of deviant behavior have not been systematically applied to the problem of who uses and who does not use cyber pornography on the Internet. Cyber crime is defined as all illegal deeds committed by, using or targeting information technology means which damages a right or interest upon which the legislator surrounded with criminal protection. First category: Information technology means such as the internet and included information, data or linked systems or devices which deems the subject and target of the crime. An example of such crimes is hacking, information destroying, operating systems malfunction or interruption, virus crime, etc. Second category: Information technology tools or means to commit the crime such as violating private life, assaults and defamation, terrorist crimes, spying, money laundry, drugs trade, etc.

Third category: Information technology means is the environment in which crimes are committed. For instance, the internet: building pornographic websites, publishing rumors and reputation defamation, propagating of deviated thoughts, etc.

Characters of Cyber criminals

This characteristic is not limited to internet crimes. As the computer might be a tool to commit such crimes, it is also a tool to commit many information crimes such as information forgery, stealing information stored in the computer and others. In addition, internet crimes don't take place using internet only but it could be by using mobile phones as accessing the internet can be through such phones. Internet crimes are of the modern crimes which use the internet to commit or facilitate the crime. The internet deems the link between all potential targets such as banks, companies of all types, individuals, etc., who falls a victim in most cases. The most significant characteristics of information technology crimes' criminal are the broad experience and super knowledge of computer and internet in general, it's not only attributable to internet crimes but its common characteristics in all information crimes including internet crimes.

The Motivation of Cyber criminals

The motive or incentive is the driver of the will which drives the criminal behaves such as love, pity, ill feeling and revenge. It is a psychosomatic power pushes the will towards committing the crime so as to attain a particular goal. It differs from a crime to one other according to differences between people in terms of age, sex, education level and other influencing factors. It differs as well in the same crime from one to another¹. In this novelty crime, many and varied motives drive the criminals for its commitment. It could be for information either stored on computers or conveyed through the internet or could be for incurring damages on specific people or entities or for attaining financial interest or exhibitionism, etc.

Definition Of Cyber Crime

The oxford reference online defines cyber crime as crime committed over the Internet. The encyclopedia britannica defines cyber crime as any crime that is committed by means of special knowledge or expert use of computer technology. Cyber crime could reasonably include a wide variety of criminal offences and activities. The scope of this definition becomes wider with a frequent companion or substitute term "computer-related crime." Examples activities that are considered cyber crime can be found in the United Nations Manual on the Prevention and Control of Computer-Related Crime. The manual includes fraud, forgery, computer sabotage, unauthorised access and copying of computer programs as examples of cyber crime.

Child pornography

The main concern of legislators and parents in relation to Internet content is child pornography, rather than other forms of sexually explicit content. This has been the case ever since paedophiles started to use the Internet for circulating pornographic materials related to children (Akdeniz). Paedophilia can be seen as a minority sexual group, with its own form of expression explicitly involving fantasies and imaginings about sex with children. But while it is often argued that pornography should not be proscribed on the basis of freedom of speech arguments, there is a general consensus that the line should be drawn with child pornography. In

most cases, child pornography is a permanent record of the sexual abuse of an actual child (except in the case of pseudo-photographs, which are discussed below). An understanding of the special way in which child pornography is child abuse, is crucial to an understanding of the whole problem of child pornography.

The Aim of this Research

The purpose of this study to was comparative cyber pornography and penal code in Iran and Malaysia. Thus, this research tries to: State the concept of information technology crimes, recognize the features thereof and the character of cyber crime. State how valid is the criminal provisions of the Iran and Malaysia Laws in order to know all the aspects of such crimes, State the legislative failure and propose the necessary solutions for replenishment as much as possible.

Research Methodology

The research is descriptive-analytical method (the library) by use of legal and non-legal books, archival sources, Internet resources, magazines, letters, legal sites and pluralization of different comments and opinions on this issue, in such a way that, according to these sources will analyze cases of comparative cyber crime and penal code in Iran and Malaysia.

Cyber Pornography and Penal Code Malaysia

Obstacles to Access

Malaysia has a relatively high degree of internet penetration, with approximately 15 million users more than half of the total population of 27 million as of 2008. There are currently 21 ISPs operating in the country, most of them privately owned. The three private mobile-telephone service providers are Maxis Communications, Celcom, and Digi.com, which control 42 percent, 32 percent, and 26 percent of the market, respectively. Malaysians can access the internet through home connections, mobile phones, or cybercafes. While the country was an early adopter of the internet and has pioneered some of the first ICT regulatory frameworks in the region, especially through the Multimedia Super Corridor (MSC) project, online access remains very much an urban phenomenon. There is a clear urban-rural gap, with more than 80 percent of internet users living in urban areas. A similar gap persists in mobilephone usage, with rural residents accounting for just 22 percent of the country's users. However, according to the Malaysian Communications and Multimedia Commission (MCMC), the national mobile-phone penetration rate was 93.9 percent in 2008, much higher than the internet penetration figure. The spread of mobile-phone access, including in rural areas, has made SMS (text messaging) an increasingly important factor in the Malaysian political landscape. In recent years, the Malaysian government has been particularly aggressive in promoting broadband access, and the country is now home to more than 1.4 million broadband users. Indeed, in October 2008 the Energy, Water, and Communications (EWC) Ministry threatened to revoke the WIMAX (Worldwide Interoperability for Microwave Access) licenses of companies that failed to roll out the service within the prescribed timeframe.⁹ The cost of internet access is reasonable relative to the gross national income (GNI) per capita of \$6,540. A broadband connection package (1 megabit per second/384 kilobits per second) offered by the largest ISP in the country cost the average consumer around \$25 per month in 2008. Any package slower than a broadband connection is significantly cheaper. User-generated-content websites such

as YouTube, social networking sites like Facebook, and blog-hosting services including Blogspot.com and Wordpress.com are freely available. Currently the internet falls under the immediate purview of the MCMC, a regulatory body that answers to the EWC minister. Both the MCMC and the ministry are guided by the 1998 Communication and Multimedia Act (CMA), which gives the EWC minister a wide range of licensing and other powers. Under the CMA, a license is required to own and operate a network facility. There have not been any reported denials of ISP license applications, but the licensing process could be a form of control, and the owners of major ISPs and mobile-phone service providers often have connections to the government. Of the two largest ISPs, TMnet and Jaring, the former is a subsidiary of the privatized national phone company Telekom Malaysia, and the latter is wholly owned by the Ministry of Finance. Maxis Communications, the largest mobile-phone service provider, was founded by Ananda Krishnan, who also owns the largest satellite broadcaster and enjoys close ties to former prime minister Mahathir Mohamad. The state government in Selangor imposed a freeze on new applications for cybercafes, but it was lifted in January 2008 after 38 months. The freeze was imposed primarily due to the widespread use of cybercafes as illegal gambling and gaming centers that operate at late hours and attract a predominantly school-age clientele, as opposed to a deliberate restriction on public access to the internet.

Limits on Content

The Malaysian government does not employ any known filtering technology to actively censor internet content or limit internet communications. There are no specific laws aimed at limiting or censoring the internet, and a provision of the CMA explicitly states that nothing in the act shall be construed as permitting the censorship of the Internet. The MSC Bill of Guarantees also promises no censorship of the internet. However, the extensive powers available to the government under older laws such as the Sedition Act, the Official Secrets Act (OSA), and the Internal Security Act (ISA) are likely to encourage self-censorship among internet users. The government has generally upheld its promises on direct censorship, except in the case of the MCMC's decision to block the controversial website MalaysiaToday. The site, a newsaggregating portal founded by Raja Petra Kamarudin, has been very critical of the ruling party. On August 28, 2008, the MCMC ordered all major ISPs to block MalaysiaToday. Home Minister Syed Hamid Albar justified the move by citing Sections 263 and 233 of the CMA, which penalize improper use of facilities or network services. The ban was repealed by the cabinet two weeks later, but EWC Minister Shaziman Abu Mansor argued that the reversal was acceptable because there were other, harsher laws available, including the Internal Security Act and the Sedition Act. Along with the ban on MalaysiaToday, the MCMC also lifted bans on about 100 other websites that websites being banned, filtered, or blocked by the government. However, users continue to be discouraged from expressing views related to sensitive or red-line issues such as Islam's official status, race, and the special rights enjoyed by bumiputera (ethnic Malays and other indigenous people, as opposed to ethnic Chinese and Indian minorities). There is a vibrant blogosphere in Malaysia. Currently the dominant language of blogging is English, with Malay used to a lesser extent. This may be attributed to the nature of the user base, which consists largely of highly educated urban professionals who are more comfortable with the English language. Many civil society groups have an online presence, but in some cases their websites are not regularly updated. All mainstream news outlets have corresponding websites that mirror the print format and do not deviate from progovernment editorial policies. Political parties

have been able to use the internet to disseminate political messages and to mobilize the people. This was illustrated in the March 2008 general election, and also in the mounting of numerous public rallies and protests. Three of the country's largest telecommunications companies reportedly experienced a surge in SMS traffic during nomination day on February 24, and polling day on March 8. Videos of political speeches and public protests were widely distributed on the internet through blogs and video-sharing websites. In 2006, an incident involving an anonymous video clip shot using a mobile phone dubbed the nude ear-squat case prompted an investigation by a royal commission into police operating procedures on body searches of detainees.

Iran's Criminal policy in deal with pornography

In Iranian penal policy in dealing with pornography, there is no Pornography term, but by law drafting and approval of computer crimes act the examples of Pornography without definition. Regarding this point is necessary that before the ratification of computer crimes code, pornography in other discrete items, including " the Act to punish persons who do audio-visual illegal activities which was approved in 24/11/1993" has been attended by legislators and Islamic Punishment Law has attended to criminalization , production and distribution of pornographic images and films. Relevant rules of law to punish those who do audio-visual illegal activities (24/11/1993 and revised 2007). In the third article of that law is expressed: Factors of production, distribution and proliferation; unauthorized audio-visual works holders ranging from the permission from Ministry of culture and Islamic guidance or without a license, regarding the content of the work, in addition to revocation of license staff as one of the penalties shall be sentenced:

(A) the main factors of production, and distribution of main pornographic audio-visual works ,for the first time will be sentenced to one to three years imprisonment and confiscation of the relevant equipment and a fine of one hundred million riyals will be sentenced and while repetition, they will be sentenced to two to five years imprisonment and confiscation of the relevant equipment and a fine of two hundred million riyals and in any case if the abovementioned agents or following persons known examples of Corruptor on earth will be sentenced to a punishment.

1. Producers of pornographic works with rape and reluctantly
2. Producers of pornographic material for sexual abuse of others
3. The main factors in the production of pornographic

Note: audio-visual works ((obscene)) according to their content is mostly showing naked male and female genital organs or sexual intercourse or sexual display.

B) producers, distributors and reproducer of tapes and diskettes and CDs and vulgar displays for the first time will be sentenced three months to one year imprisonment and fined two million Rials and for the second will be sentenced one to three years imprisonment and ten million Rials a year to afford to three years imprisonment and fined five or thirty three million Rials and if repeated they will be sentenced three to ten years imprisonment or ten million to fifty million Rials and confiscation of the relevant equipment.

Note: audio-visual works ((vulgar)) refers to the works with pornographic images and scenes, and promote opposed the Islamic ethos.

Note: owners of cassettes and CDs and pornographic diskettes and vulgar subject to this Act will be sentenced five hundred thousand Rial to five million Rial and confiscation of the relevant equipment Note 3: The use of minors for conservation, supply, sale and reproduction of

unauthorized cassettes and compact disc subject to this Act, the maximum punishment will be operated for agent. As can be seen the Penal Code reform who have unauthorized activities will also include computer pornography as including computer software (hojjati Ashrafi, 2006).

Result

Given that pornography offenses, including crimes that offend decency and public morality does not need a particular result occurred and the mere physical act is sufficient in crime realization. In other words the crime is considered to be absolute. in Malaysia is young pornography (persons under 20 years) and child (persons under 14 years) a crime. Iran has tried that approach and criminalization of a complete ban on pornography adopt. It is essential that the international obligations, child pornography segregated from adults and dealing with child pornography made more stringent.

Discussion

One of the most important issues and problems in cyber crime being observed children and adolescents in international networks (Internet). In recent years a significant amount of pornography is dedicated to Child pornography and also researchers in their paper and the laws of most countries have the most attention to child pornography. According to the experts's comment, is expected until 2005, about 7/7 million children ((online)) use the Internet. However, cyber criminals abuse the situation and simplicity of children and try to deviate them through chat rooms and e-mail and finally abuse them in the form of pornography and disclose their pornographic pictures on porn sites (Bastani, 2007). In fact, with the provision of public use of the Internet, those who already had a moral and sexual deviation with children in the community and real space have found the ability to carry out their purpose in a virtual environment with other hunters and their colleagues for sexual pedophilia of children and pornography (Bastani, 2007). Pedophile literally means to love a child, and does not imply sexual activity. But in practice it is an activity which in it an adult prefer children before puberty for the sexual excitement that There are at greatest risk of this type of abuse .On the other hand, with regard to this matter, which children use of Internet has increased, this is an opportunity for cyber criminals, to abuse them through chat rooms, try to deviate them through chat rooms and e-mail and finally abuse them in the form of pornography and disclose their pornographic pictures on porn sites (Bastani, 2007). Recently the international police (Interpol) by operation which is called (over) are trying to identify and arrest the gangs who build obscene sites that have child sexual abuse. According to provided statistics, every fifth child, a child in America has had a direct encounter with Sexual subjects in Internet. On the other hand On the other hand 77% of cybercrime victims are under 14 years, and 22 percent of victims were 10 to 13 years old.. In any case, the issue of child abuse and pornography which is classified as crimes against the content is very important issues in cybercrimes that More serious encounters ought to be done to deal with it (Bastani, 2007).

References

Abachi M.(2009). criminal rights of children in the United Nations documents, second printing, publication of Majd.

- Akdeniz, Y, Walker, C, Wall, D. (2000)** The Internet, Law and Society, Addison Wesley Longman, 2000, pp 207-231.
- Bastani B. 2007.** Computer Crime and Delinquency Internet is a manifestation of the new, second edition, Behnami published.
- Bay and Ghahremanipoor (2009).** examined the legal jurisprudence of cyber crimes, first edition, Research Institute of Islamic Culture
- Bodaghi F, Ahmadi M.(2002).**the legal shortcomings and deviations, women's Institute of strategic studies, no. 17, pp. 177-203 can be accessed on the website www.noormags.com
- Ghorbani. A, A. Ghorbani, M. Naghavi, H. Kheyri. (2014).**Legal Study Of Criminal Behavior Based On Pornography On Law Of Iran. singaporean journal of business economics, and management studies VOL.2, NO.12, 2014
- Hojjati Ashrafi Gh.(2008).**full set of laws of regulation, treasure of knowledge library, 10th printing.
- Jensen, Robert (2006).** Pornography; Movies” Encyclopedia of children Adolescents, and the Media; SAGE Publications 2006.
- Kamalan Mehd.(2013).**the Islamic penal law, Second Edition, publishing fitted, 336 pages.
- Linz, Daniel (2007).**”Pornography, Effects of Exposure to”. Encyclopedia of Psychology and law; SAGE publications 2007.
- Lovell. Jarret S (2002).**”Obscenity and Pornography”. Encyclopedia of Crime and Punishment; SAGE Publications 2002.
- Luise, Kohle- M. and Luisa O. (2008);** Sex and Sexuality Probing the Problematics; UK;Oxford; 2008.
- McElroy, Wendy (2008).** “Pornography”. The Encyclopedia of libertarianism; SAGE publications 2008.
- Norbeha R.(2004).** General criminal rights, 10th printing, Dadafarin publication ,573 pages. Robinson, Malila N; “Anti-pornography Activism”. Encyclopedia of Activism and Social Justice; SAGE Publications 2007.
- Siegfried, Michael (2004).** “pornography”. Encyclopedia of White-Collar & Corporate Crime; SAGE Publications 2004.
- Suarez, Alicia E (1995)** ”pornography”. Encyclopedia of Social Problems; SAGE Publications 2008.
- Validi m. (1995).** The general criminal law, vol. IV, second printing, publishing.