

CHILDREN AND M-COMMERCE: SOME SOCIAL AND LEGAL ISSUES

Suhaimi Ab Rahman ¹ & Rasyikah Md. Khalid ²

¹ Faculty of Economics and Management,
Universiti Putra Malaysia,
43400 Serdang, Malaysia

² Faculty of Law,
Universiti Teknologi MARA,
40450 Shah Alam,
Selangor, Malaysia

E-Mail: suhaimiabrahman@yahoo.co.uk

ABSTRACT

Mobile-culture among children and young person is happening all around the world. For the new generation, mobile phones are not only a device to make calls, but rather as an instrument for coordinating their social life. SMS, MMS, games, music, and videos are features available on the mobile phones and teenagers are their main players. Little that they know that these activities are part of a new way commerce is carried out. Mobile commerce or M-Commerce is growing but its impacts on the young generation can be tremendous. This short article aims at highlighting possible issues that may arise with regard to minors and M-Commerce. Special reference has been made to the legal positions in Malaysia with regard to contractual issues arising from M-Commerce.

KEYWORDS: M-Commerce, Minors Contract, Malaysia.

Introduction

M-Commerce industry has been seen as a new way of buying and selling goods and services. According to Durlacher Research (2000), M-Commerce is defined as “any transaction with a monetary value that is conducted via a mobile telecommunications network”. With a well over three billions mobile phones user in the world (Wireless Intelligence, 2012), M-Commerce will dominate and replace the conventional businesses in the future. At the moment, the industry is heavily relied on the entertainment industry with ring tones and screensavers as the most favorites. With the increase use of camera phones, phones with MP3 players, radios and even TV, consumers are waiting for other innovations that M-Commerce may offer.

Despite the excitement, the obvious vital consumers of ring tones or screensavers are children and young persons. A survey by Asian Telecoms showed that Hong Kong tops children ownership of mobile phones in Asia with 29% whilst other Asian countries have the average of 12% children ownership of Mobiles phones (AFP, 2006). The percentages are much higher in Europe with an average of 75% ownership of mobile phones by children in most of the European countries (mobileyouth.org, 2006). In 2012, 73% of 10-year-olds children in the United Kingdom own a mobile phone compared to an average of 45% of them in other countries (Robin Yapp, 2012).

Status of Minors Contract in Malaysia

Some careful observation need to be given with regard to the legal implication of the commercial activity conducted through this handy medium of communication and entertainment by children. Firstly, can children and young persons buy ring tones or the like via their mobile phones? The law as it stands in S. 2 Age of Majority Act 1971 provides that the minimum age for contractual capacity is 18 years old. The effect of an agreement entered into by a minor does not expressly stipulated under the Contract Act of 1950, but can be found in Privy Council's decision in the case of *Mohori Bibee v. Dhurmodas Ghose* (1903) 30 IA 114, PC). The court in this case held that the effect of section 9 and 10 of the Indian Contract Act, which are in pari materia with sections 10 and 11 of the Malaysian Contract Act, was to render all such agreement void. This decision has been followed by the Malaysian judges when deciding cases involving children, for examples in *Tan Hee Juan v. Teh Boon Kiat* (1934) MLJ 96), *Government of Malaysia v. Gucharan Singh* (1971) 1 MLJ 211) and *Leha bte. Jusoh v. Awang Johari bin Hashim* (1978) 1 MLJ 202).

Children are not totally prohibited from committing themselves into any form of contract. The law provides that minors can enter into a "necessary" contract which generally refers to contract to supply goods "suitable to the condition in life of the minor" and to his or her "actual requirements" at the time of sale and delivery. Chitty (2008) acknowledges that "necessary" is a relative term and has to be construed with reference to the minor's age and station in life. In this regard, it should not be confined to matters only as are positively essential to the minor's personal subsistence or support, although will not likely include matters that are of "comfort and convenience only".

With that in mind, would a judge today regard ring tones as necessary to a sixteen years old student? If the mobile phones are bought and owned by the respective minors' parents, it is arguably irrelevant whether or not the ring tones are necessities since the act of the minors can be taken as made on behalf of the adult. If the minors bought the mobile phone and assuming that it has been regarded as a necessary contract, materials bought via the mobile phones will be examined separately. With regard to ring tones or screen savers, can they be construed as items "suitable to the condition in life of the minor"? If these are compared to other items phonographic or adult materials which are clearly not "suitable to the condition in life of the minor", ring tones or the likes may then be construed as "suitable".

It is apparent that the question whether a contract is for necessities or otherwise is not an abstract test. It depends upon the minor's needs at the time of the contract. What might be a necessary today may not be so in the future, if the need has been satisfied in the meantime. Ring tones or the like may be a bit tricky, as the answer depends on how we look at it. We never know if these are to be litigated upon. Perhaps, if it happens, a ring tone a week might be deemed "suitable" hence necessary, whilst too many of them should be viewed differently.

Mobile Payments

In the e-commerce transaction on the internet, payment will normally be done via a credit card and this automatically limits the minors, who are prohibited from entering into a loan agreement, from buying materials on the website. The position will be different in m-commerce since there is an opportunity to buy materials by debiting the pre-pay amount. This is normal for ring tones as the charge of RM3 will be debited from the pre-pay amount in a particular month. Question arises with regard to contents which are not suitable for minor such as phonographic or adult materials. Most of the content providers have a strict procedure for getting them. Most adult materials require customers to pay by credit card which

automatically excludes children. There are however reported cases where minors were able to access pornography via mobile phones. The Guardian has reported in 2006 that a service provider has allowed adult material to be bought by anybody at a premium rate text message.

With a high rate of mobile ownership by children and the availability of adult materials, the accountability should rest on the service providers. They will need to increase the technical procedures to avoid this from happening again. To some extent, the European Mobile operators are developing a self-regulatory code by February 2008 to provide safeguards for children who are using mobile phones. It aims to protect children not only from these materials, but also on other related issues like “mobile bullying” or sexual grooming for abuse. In Malaysia, the availability of these materials may be limited, but mobile operators here may take the European example and equipped themselves against the possible problems in the future.

Social Issues

Logically, too much downloading of ring tones, mobile games, etc. can lead to high spending among minors and teenagers. The minors, and in most cases their parents, will end up in financial difficulties in meeting this new needs. If weekly or monthly allowances given previously are enough to cover basic needs like food and drinks and clothing, more is needed to buy top-ups or to pay up bills. In New South Wales Australia, the Commission for Children and Young Person has reported that youth are facing debt even before they leave school and selling all their belongings just like drug addicts do. The problem partly lies with the fact that children and young person may not be able to fully comprehend all terms and conditions, and all the small prints at the bottom of the paper. The Commission also suggests a standardized and easy to understand contracts, and more education and training for young people at school on managing debt and bills (CCYP, 2002).

Be that as it may, mobile commerce and minors do not always bring bad news. Brassler (2006) explained that the Liberty Science Center USA has come up with Science Now Science Everywhere (SNSE) project which allow youth to download scientific information wherever and whenever they want to. In Malaysia, a number of religious downloads are available which enlighten youth on moral and religious information. Hence, with cooperation and initiatives from all sectors of the society, minors and M-commerce can be manipulated as a tool in developing our new generation intellectually and morally in a more effective way.

Conclusion

Society today cannot ignore the existence of mobile culture among children and young person. With the development of mobile phones technology, they can enter into various transactions which may be limited or restricted in the real world and on the internet. Whilst regulation from the authority can be an impediment for the mobile operators in developing new technologies, they should make sure that the new technologies do not sacrifice the potential and interest of the minors. To this end, self-regulatory by the mobile operators can become an acceptable tool in balancing the need of the technology and the need of the society, i.e. to safeguard the children and young people.

References

- Bressler, D., (2006), Mobile Phones: A new way to Engage Teenagers in Informal Science Learning. [Online] Available: <http://www.archimuse.com/papers/bressler/bressler.html>
- Chitty on Contract. (2008). 30th Edition. London: Sweet and Maxwell.
- Commission for Children and Young Person, (2002), Young People and Mobile Phones - The Good, the Bad and the Ugly. [Online] Available: <http://www.kids.nsw.gov.au/kids/advocacyresearch/changinglaws.cfm?itemID=2817D39B02AE4AD637DA23AC1492A6DE>
- Durlacher Researcher (2000) as cited in Norman Sadeh, M-Commerce- Technologies, Services, and Business Models. (2002). Boston: Wiley Computer Publishing.
- Robin Yapp, (2012), Three-quarters of British Children Aged 10 Own a Mobile Phone- Twice as Many as Overseas. [Online] Available: <http://www.dailymail.co.uk/news/article-2198450/Three-quarters-British-children-aged-10-mobile-phone--twice-overseas.html>
- The Guardian, (2006), Children Able to Access Hardcore Porn via Mobile. [Online] Available: <http://www.guardian.co.uk/technology/2006/feb/02/news.childrenservices>
- SpaceDaily, (2004), Hong Kong Children Top Mobile Phone Ownership in Asia. [Online] Available: <http://www.spacedaily.com/2004/040806104812.at84m311.html>
- Wireless Intelligence, (2012), Analysis: Global Mobile Penetration- Subscribers Versus Connections. [Online] Available: <https://wirelessintelligence.com/analysis/2012/10/global-mobile-penetration-subscribers-versus-connections/354/>