

COURTING RISKS AT THE COURTS: THE PERCEPTION OF RISKS IN THE ADOPTION OF ICT AT THE MALAYSIAN COURTS

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ABSTRACT

The aim of this paper is to examine the perceived risks of the adoption of information and communication technologies (ICT) in the justice system of the High Courts of Malaysia. The research adopts a qualitative method, comprising of the collection of secondary data, which involves library-based research over relevant laws and regulations, textbooks, journal articles, practice directions and reports. The secondary data is triangulated with the primary data generated from a case study comprising of four High Courts of West and East Malaysia. A total of sixteen respondents were interviewed to explore and understand their perception of the risks and their attitudes towards such risks in the adoption of ICT at the respective courts. The primary data, which had been generated, was analysed by using the computer aided qualitative data analysis software ATLAS.ti version 7 prior to reporting of the same. The findings indicate that several perceived risks exist when ICT is used in court. Such risks are in line with the theory of risk perception, particularly the risks of performance, financial, time, psychological, social, security and privacy. The research further found that the risks do not affect the attitude of the users in adopting or continuing to adopt these technologies. Rather, the judges, the court administrative officers, the lawyers and the system developers either could not perceive these risks, or they downplay these risks, which eventually resulted in the adoption itself. The research provides some insights into the risks of the adoption of ICT by the courts, and it would contribute to the body of knowledge on ICT and ICT adoption in Malaysia. The outcome of this paper will assist the researchers in proposing recommendations for the amendment to the relevant statutes, improvement to the practice directions, and to propose best practices and code of conduct in eliciting improvements to the ICT adoption by the Malaysian courts.

Keywords: *Perceived risks, ICT adoption, Malaysian courts, e-court, e-justice*

INTRODUCTION

In many jurisdictions, numerous intelligent systems embody ICT such as telecommunication networks and the Internet, in devices such as mobile telephones and PCs, and in services such as banking, digital television, social networking and e-government (Amal al-Ashtal, 2009). Within the context of the courts, there are currently six technology applications which the High Courts of Malaysia have adopted, namely the e-filing system, case management system, queue management system, court recording and transcription, audio and video conference system and eventually the integrated community and advocates' portal. Each of these applications is designed for different kinds of users.

First, the e-filing application allows for electronic submission of court documents for the purpose of filing and registration by the litigants and/or their lawyers using the Internet medium (Hamidah, 2011). On the other hand, judges and court officer employ the case management system for case management and hearings before the registrars. Such application is to manage all cases managed by the court through a computer system (CMS Briefing, 2010). Meanwhile, lawyers use the queue management system. Under the system, numerous kiosks were placed within the court complex, to facilitate the attendance of the lawyers for the cases (QMS Briefing, 2010).

Second application is the court recording and transcription, which is largely used by the judges and court interpreters. Such application consists of video and audio recording both in open court and chambers hearings. Another application is the audio and video conference system which is used at the High Courts for court hearings among judges, lawyers and other persons involved in the session who are at different locations (Zaki, 2010). The system also allows users to share documents, picture files, images and the like among those in remote locations, which constitutes an exceptionally crucial feature for court hearings (Kuching High Court, 2010). Finally, the community and advocates portal serves as an information technology channel of communication and operations among the public community, including the clients, the advocates who represent the clients and the courts (Kuching High Court, 2010).

Past researches have shown that the ICT adoption at the courts has led to a more efficient and effective judicial system, improved transparency of the way the judiciary works, increase in the citizen's level of access to the courts and increase in the confidence of the citizens and business in the judicial system (Cerrillo and Fabra, 2009; Carnevali, 2009; Velicogna, 2009). However, at the same time such technologies potentially generate novel uncertainties and insecurities (Hamin, 2009). Accordingly, this article examines the perceived risks of the adoption of ICT in the justice system of the High Courts of Malaysia and the attitude of the users in adopting the ICT applications at the courts.

THEORIZING PERCEIVED RISKS AT THE COURTS

In addressing the applicability of perceived risks to the adoption of ICT at the courts, it is pertinent to first outline the theory of perceived risks itself. Several researchers have defined this

theory as “a combination of uncertainty plus seriousness of outcome involved” (Bauer, 1967), and “the expectation of losses associated with purchase (adopt) and acts as an inhibitor to purchase (adopt) behavior” (Peter and Ryan, 1976). A more recent study defined perceived risks as “the potential for loss in the pursuit of a desired outcome of using an e-service” (Featherman and Pavlou, 2003).

Perceived risks of ICT adoption were previously examined when circumstances of the decision create some feelings of uncertainty, or discomfort and/or anxiety (Dowling and Staelin, 1994). Besides that, such risks could also arouse conflict in the consumer (Bettman, 1973) and psychological discomfort (Zaltman, G. and Wallendorf, 1988), create uncertainty in the consumer (Engel, Blackwell & Miniard, 1986). It is also a common risk that the consumer would feel pain due to concern (Taylor, 1974) and suffer from cognitive dissonance (Festinger, 1957).

Similarly, Featherman and Pavlou (2003) reviewed the facets of perceived risks as including performance, financial, time, psychological, privacy and overall risks. Within the context of the courts, each of these risks entails the ICT adoption at the Malaysian courts, and hence, would apply equally. For instance, performance risks denote the possibility of the ICT applications malfunctioning and not performing as they were designed and advertised and, therefore, failing to deliver the desired benefits, such as the court recording and transcription, as well as the audio and video conference systems. Accordingly, as ICT is initially adopted to promote justice and fairness, the pertinent concern is the extent to which the increased use of ICT in the courts affects both the reality and perceptions of fairness and justice (Carnevali, 2009).

Financial risks indicate the potential monetary outlay associated with the initial value of installation as well as the subsequent maintenance cost of the ICT applications at the courts. Admittedly, the setting up full electronic trials would inevitably mean the involvement of additional costs, and it may prove to be a factor inhibiting their more widespread use of ICT in the courts (Weibel, 2002). Commentators such as McMillan (2002), Weibel (2002) and Reach (2004) all agreed that the costing could become a barrier to the full implementation of ICT systems.

Meanwhile, time risks involve the perception of the users relating to the potential loss of time when making a bad consumption decision by spending time researching and adopting the ICT applications, learning how to use it only to have to replace it if it does not perform to expectations. Accordingly, not only the courts need to evaluate the applications that would best suit their needs, but the judges, court administrators and lawyers also need to undergo trainings to learn how the system works as part of their work routine. In this regard, at the successful implementation of the technologies requires the concerted effort of judges, court administrators, court users, system developers and information technology experts (Wong Peck, 2008). There is the need for effective training for judges, court staff and practitioners. Hence, the need for a close liaison and effective communication between courts and law firms in the implementation of ICT in the courts (Macdonald and Wallace, 2004).

Another perceived risk is the psychological risk which follows the consumption of the technologies at the courts might have a negative impact on the users' peace of mind or self-perception. Accordingly, this leads to potential loss of self-esteem (ego loss) from the frustration of not achieving a goal relating to the adoption of ICT. For instance, the transformation from a conventional system of the judiciary into the adoption of modern ICT inevitably raised the issue of acquisition of skills and readiness of the judges, court administrators and lawyers. Such a transformation potentially could be a matter of time before all parties become familiar with the ICT applications and adoption of these technologies in their daily routine (Wong Peck, 2008).

Perceived risk could also mean the privacy risk, which indicates the potential loss of control over personal information, such as when information about one is used without his knowledge or permission. As ICT is increasingly being adopted in the court's work routine, court records including pleadings, order, affidavits, judgments and etc. are electronically kept in the court's database. Once becoming electronic in nature, the records can be immediately transmitted, stored, and retrieved, which inevitable increases privacy concerns (Lederer, 2003). These records include those documents created by the parties, their counsels, or a judicial officer or his/her designate.

The final risk is the security risk, which is one of the most challenging problems faced by customers who want to trade online because of the inherent vulnerabilities of the ICT. Suh and Han (2003) argue that when a customer trades in an online environment, anyone from anywhere in the world could access the information being transmitted. Such vulnerability has generated a number of studies (See for instance, Aldridge, White, and Forcht, 1997; Bhimani, 1996; Furnell, and Karweni, 1999; Gefen, 2000) examining the basic security-control requirements in the technologies, which may be divided into five categories, namely authentication, non-repudiation, confidentiality, privacy protection, and data integrity. These security requirements could be achieved by various technologies such as encryption, third-party certificates, digital signatures, and compliance with the privacy policy.

Accordingly, all the above-mentioned perceived risks indicate that such risks could arise from the adoption of ICT at the courts. Therefore, this article seeks to examine the perception of the risks on the part of the users of ICT, including the judges, the court administrators, the system developers and the lawyers, and how these risks shape the attitude of the users in adopting these technologies at the courts.

RESEARCH METHODOLOGY

Adopting a qualitative method, the research engages in both primary and secondary data. The collection of the primary data was done through field work from four case study that focuses on four units of analysis representing the High Courts, namely the High Court in West Malaysia i.e. High Court in Kuala Lumpur and High Court in Penang, and the High Court in East Malaysia i.e. High Court in Kuching, Sarawak and High Court of Kota Kinabalu, Sabah. Figures 1 and 2 respectively explain these units of analysis for the case study and the purposive sampling for such units.

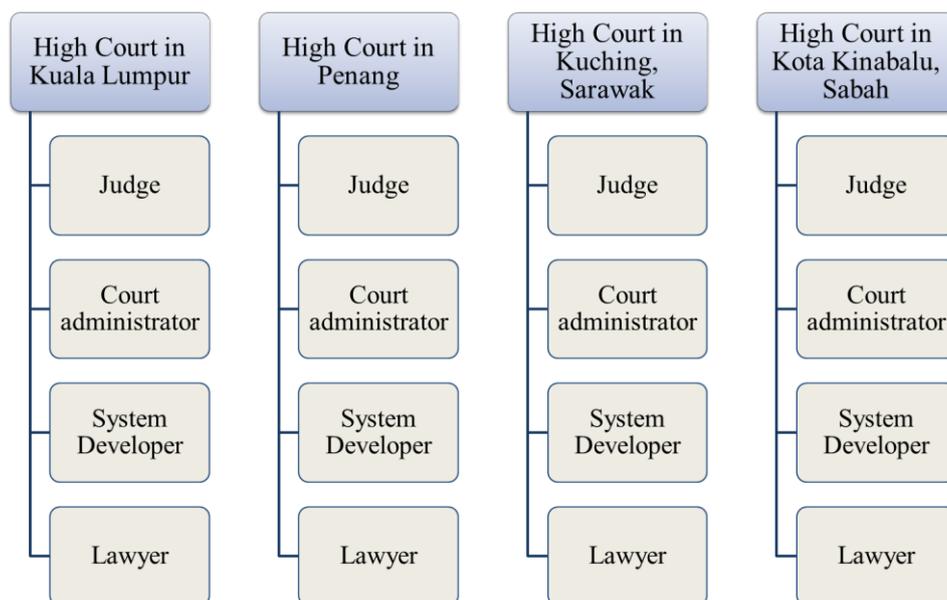


Figure 1: Units of analysis for the case study

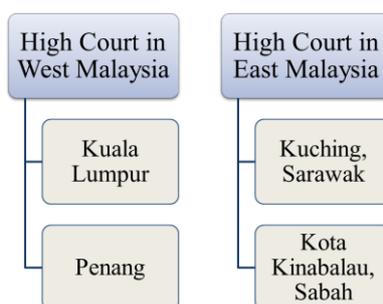


Figure 2: The purposive sampling for the units of analysis

The instrument used was face-to-face semi-structured interview with sixteen respondents as it gives the researcher the opportunity to explore the respondent's opinion of an issue in depth, rather than to test knowledge or simply categorise (Stroh, 2000). The respondents are individuals involved directly with the application of courtroom technology at each of the courts, being the judge, the court administrative officer, the system developer and the lawyer. The interviews enquired into the respondents' perception of the risks involved in the adoption of ICT at the respective courts, and to examine their attitude towards these risks. The interviewer used an electronic voice recorder throughout the interview sessions, with the consent of the respondents.

The primary data is triangulated with the documents obtained from the respondents and the secondary data which involving both primary and secondary sources. Primary sources include the laws in Malaysia while secondary sources include documents collected from the respondents during the semi-structured interviews, reports of the government, the state and the judiciary, the rulings of the

Malaysian Bar Council and the state bars, practice directions and online databases such as Lexis.com, Ebscohost, CLJ Legal, Lawnet, Springer Link and ProQuest.

FINDINGS

The primary data was analysed using ATLAS.ti qualitative data analysis software version 7 before obtaining the research findings (Friese, 2012). To begin with, the primary data was transcribed and coded into their respective themes using the constant comparative analysis method. During this process, the researchers began to look at what makes a piece of data different and/or similar to other pieces of data. This method of analysis is inductive as the researchers examine the data critically and draw new meaning from the data (Glasser, 1965). Once the analysis is completed, the findings were sent for output for reporting purposes. For the purpose of this article, the primary data indicates three findings representing the socio-legal implications arising from the ICT adoption by the Malaysian courts.

Lack of perception of risks

The findings revealed that there is lack of perception of the potential risks associated with ICT adoption at the courts on the part of the respondents. The findings indicate that most of the respondents (12 out of 16) do not perceive such risks. In their opinion, since the government is pushing for the use of ICT in the department's work routine, hence they simply adopt these ICT applications at the courts without perceiving or even evaluating any associated risks which could arise from such adoption. This finding is consistent with the report by Rettie (n.d.) who claims that awareness is almost a similar for consciousness – its meaning is derived from the object of the awareness. In essence, as the users were not conscious of the potential risks of the adoption of ICT at the courts, they lack the awareness of the presence of such risks in their daily work routine. Similarly, Stocklmayer and Gilbert (2002) argue that technology changes day by day, and hence, the knowledge and surrounding factors also change with respect to the advancement of the technologies. Therefore, the users must keep abreast with the development of these technologies in order to keep informed of the changing nature of technological risks as opposed to traditional risks.

Downplaying of risks

The finding suggests that while a few of the respondents (4 out of 16) acknowledged the potential risks arising from the adoption of ICT at the courts, they downplay such risks for they are satisfied with the level of protective mechanisms provided by the system developers for the said technologies to be used. This finding is consistent with the report by Slovic (1987) that the users in the organization needs to be fully aware and respond to risks; rather they tend to downplay or prefer not to admit the presence of such risks. Additionally, Fessenden-Raden, Fitchen and Heath (1987) opined that risk communication is vital in informing the users as to the potential risks which could arise in any

given environment. Therefore, apart from exposing to users of ICT on the potential risks within the court settings, the users should also be adequately informed so that they can make proper decisions in adopting the technologies or otherwise.

Perceived risks do not affect actual ICT adoption

The findings from the interviews further showed that given that the perceived risks relating to the adoption of ICT at the Malaysian courts does not affect the actual consumption or non-consumption of the technologies on the part of the users, including the judges, the court administrative officers, the system developers and the lawyers. On the other hand, the actual consumption of the said technologies are motivated by the ease of use and perceived benefits of technologies to the daily work routine of users, as well as the requirements by the court officials and top management that courts shall move to technology based applications instead of paper-based courts.

Evidently, this finding is consistent with the report by Wardman (2006) that emotions play a significant role in determining the actual behavior of the user, instead of the perceived risks. If such risks are not at all or minimally perceived by the users, then most likely such risks do not affect the actual adoption of ICT by the users. Likewise, this finding is also in line with Bourque, et. al. (2012) who suggests that risk perception does not have a direct impact on the users' behavior. Its effect is largely mediated by knowledge, perceived efficacy, and milling behavior such as orders from the top management.

CONCLUSION

The research highlights the point that, despite the numerous literatures highlighting the emerging risks associated with the adoption of technologies at the courts, the users do not perceive these risks nor do they rely on such risks, in determining their actual adoption of the technologies or otherwise. This finding could be a catalyst for future research on the evidence of actual presence of such risks within the court settings. Accordingly, taking into account such potential risks and suggestions to manage these risks, the researchers recommend some improvements to the current practice directions of the courts, and creation of best practices and code of conduct in sustaining the utility and benefits of ICT in the Malaysian courts.

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