

Criminal Penalties for Commenting on the Qatar Situation and Liability for Posting, Re-Posting and Sharing Content on Social Media & Electronic Platforms

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Following the severance of ties with Qatar by several countries, including the United Arab Emirates ('UAE'), there was a recent affirmation that legal action could be pursued against those who show sympathy with Qatar or those who object to the position of the UAE in this context. This extends to expressions made through social media, or any type of written, visual, or verbal form.

We note that the existing Criminal and Cyber Crime Laws already penalise acts that may affect the national unity, public order, or social stability. For example, an English translation of Article 24 of the UAE's Cyber Crime Law states the following:

'Any person who established, operated or supervised an Electronic Site or published information on an Information Network or any of the Information Technology Tool to promote or favor any programs or ideas that may stir sedition, hatred, racism or sectarianism or hurting national unity or social peace or prejudice of public order or public morals shall be punished by temporary imprisonment and a fine not less than (AED 500.000) and not exceeding (AED 1.000.000).'

Apart from the above and generally speaking, millions of users of social media and other electronic platforms 'share' and 're-post' content on their newsfeed on a daily basis.

Without a doubt, an author creating illegal content (for example, negative comments towards the situation of Qatar in the developing context) and uploading it on social platforms may be legally liable. In fact, the legal risk could extend beyond the author, in some circumstances. Reposting or sharing materials available on one's newsfeed could result in penalties and the user could find himself involved in a criminal case.

The large number of users, posts, and word count on social platforms also gives the user a false sense of security that his/her words do not matter and that no one would take notice. In many heated discussions over the internet, users may insult others or use defamatory language. They may use words that they think are appropriate, as it is in their home country, not knowing that it may constitute a crime in another country.

Crimes Associated with Re-posting and Sharing

There are obvious risks if certain content was published, for example, where someone re-posts another user's status that invites the public to purchase from him illegal drugs and narcotics. However, the matter becomes tricky if the 're-post' concerns something that seems positive, on the face of it. For example, someone inviting the public to help the poor and donate to the unfortunate. In this regard, there are several restrictions in the UAE regarding collection and promotion of donations through media and technological platforms, including a requirement to obtain approval from the relevant authority prior to the same. Violating those restrictions could lead to criminal penalties, which could also extend to someone who shared or re-posted messages or content

about the charity organisation.

In other scenarios, some statements could be seen by users as a normal way of expressing views; however, these statements sometimes include mockery and criticism of others, whether ordinary persons, high ranking officials, or governments. It can be held that such statements amount to a criminal offence.

This is not necessarily restricted to involving persons the government of the UAE, per se, and could extend to other countries. The UAE law prohibits publishing content disparaging or showing a negative aspect of a president of an Arab, or a neighbouring, country and content that may adversely affect the relationship between those countries and the UAE.

Also, offensive pictures uploaded on social media can constitute a crime. Similarly, publishing a picture of someone who did not approve its publication is also a crime.

Insults and Use of Defamatory Language

In one incident, a number of users expressed their rage against a company, their former employer, by typing statements that contained insults and defamatory language. The statements were posted on a well-known website providing business and employment networking service. In reliance on the UAE Cyber Crime Law, the employer in question has the right to initiate criminal proceedings against those employees for insulting the company on an electronic platform.

In another case, work colleagues were discussing business and work oriented issues via internal emails. The discussion heated up, leading one of the colleagues to use inappropriate words that he believed to be acceptable in his home country. However, the recipient filed a criminal complaint against him arguing that those words constituted insults under the UAE Cyber Crime Law.

Similarly, liability can also be established for insults and defamatory language that one sees frequently in a simple comment on a picture or a discussion between others on a newsfeed. Needless to say, the same liability would also arise when the offensive content is sent directly to a smaller group of people in an email.

Whilst it is far-fetched to deem that a user who re-posts defamatory language that was posted by another user has committed a crime, it is nevertheless arguable as outlined in the context of this article and the below judgment.

Collecting and Re-publishing

In one case, a claimant filed a case against a renowned company before the Abu Dhabi Court to claim for compensation. The defendant was an owner of a website providing access to information on politically exposed persons, entities, and individuals with high risk around the world. The database on the website assisted users in checking the background of various individuals to identify whether they carry high financial, reputational, or legal risk.

The defendant did not create the information, but rather compiled the database from other credible sources, such as renowned news and media companies. While arguing his case, the claimant noted that the defendant published inaccurate information about him being sentenced in a criminal case, describing him as a ‘terrorist’, as being related to someone who is involved in criminal conduct, and other information that showed that he had a ‘high risk’ profile.

The information about the claimant on the website led to the rejection of the claimant’s requests for bank facilities and loans that the claimant had applied for, cancellation of visa for a country he needed to visit, as well as affecting many aspects of his business and social life.

The Abu Dhabi Court of First Instance ruled against the defendant, obliging it to pay compensation for the damages sustained. The judgement was upheld by the Court of Appeal and Cassation.

In its defence, the defendant asserted that it was not the author of the information in question, it only re-published the information already available from other sources on the internet. The defendant explained, as an analogy, that the service provided by it is similar to the search engines available on the internet. A user types the keyword and information from other sources are revealed to him, which includes negative and positive information provided by third parties. The search engine should not be liable since they are not the 'author' of such information.

The Abu Dhabi Court of First Instance ruled against the defendant, obliging it to pay compensation for the damages sustained. The judgement was upheld by the Court of Appeal and Cassation.

Whilst there is no system of precedents in the UAE, the foregoing judgment still provides for some vagueness towards imposing liability on 'non-authors' who collect and compile previously published information in the one place. The same concept may apply to re-posting and re-publishing.

Recommendation

As a general rule, we recommend the following:

- Do not post or re-post content on social or any other platform when you are not sure of the accuracy of the content.
- Avoid using personal data or infringing rights to privacy of an individual. This extends to individuals' social statuses, personal or contact details, as well as personal photos or any other similar data.
- Avoid publishing or re-publishing content that:
 - Encourages discrimination or acts of violence;
 - Adversely affects or may affect public order or social stability.
 - Infringes intellectual property rights of others;
 - Violates children's rights;
 - Includes negative reference to religions; or
 - Promotes illegal activities.

In all cases, we recommend seeking legal review of the content before publishing or re-publishing material that may be questionable. Consulting with a lawyer will also provide you with insights and a proper assessment of risks to know the possible liabilities that may be faced.

Al Tamimi & Company's Litigation team regularly advises on Cyber Crimes. For further information please contact Omar Khodeir (o.khodeir@tamimi.com)