# UAE Supreme Court Rules No Privacy Invasion via WhatsApp

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The case involved a husband (the defendant) who took a video of his wife (the complainant) and sent the video recording to the complainant's mother instantaneously through the instant messaging application; WhatsApp.

The complainant/wife filed a criminal complaint against the defendant/husband for breach of Federal Decree-Law No. 5/2012 on Combating Cybercrimes (the "Cybercrime Law") which prohibits the use of a computer network or electronic information system or any information technology means for the purpose of the invasion of privacy.

The complainant/wife requested that the defendant/husband be penalized under Article 374/1 of the Penal Code and Article 21 of the Cybercrime Law. (Citations provided below.)

Amongst the requests by the complainant for the judiciary to order a fine against, and the imprisonment of the defendant, the complainant also requested an order for the prohibition of the defendant to access WhatsApp and the telecommunication network used by the defendant in the purported crime.

The complaint was first filed in mid-2017, with the final and binding ruling being issued by the Federal Supreme Court in mid-2019.

It is was decided by the Federal Supreme Court that invasion of privacy crimes committed through WhatsApp are not covered by the Cybercrime Law if the crime involves two or more persons in a closed room with the subject matter and media not privy to others outside that room.

The court did not rule on whether there were breaches under the Penal Code as the limitation period of three months on insult and slander accusations had expired by the time the complaint was filed.

In this ruling the Federal Supreme Court sets two elements to the test of whether the privacy of another person has not been invaded via electronic/digital means:

- Outside of cyberspace, if the accused, the suggested victim, and the recipient(s) of the media purported to have invaded the privacy of another, are physically located in a place closed-off to others; and
- If the media purported to have invaded the privacy of another is distributed only to persons in the same closed-off venue, who are also privy to the subject matter of the distributed media.

**In the Workplace**

The ruling raises questions towards the applicability of the Cybercrime Law in a workplace environment.

Comparatively, if this ruling were to be used as reference in managing workplace privacy policies, then it is arguable that a recording/image of one employee shared amongst other employees may not necessarily fall under the Cybercrime Law's invasion of privacy provisions if said employees are all within a closed-off area (a closed office space for example) at the time, and the media is not distributed to persons outside that closed office space.

**Provisions**

- Article 21 of the Cybercrime Law:

*Shall be punished by imprisonment of a period of at least six months and a fine not less than one hundred and fifty thousand dirhams and not in excess of five hundred thousand dirhams or*

*either of these two penalties whoever uses a computer network or and electronic information system or any information technology means for the invasion of privacy of another person in other than the cases allowed by the law and by any of the following ways:*

*1- Eavesdropping, interception, recording, transferring, transmitting or disclosure of conversations or communications, or audio or visual materials.*

*2- Photographing others or creating, transferring, disclosing, copying or saving electronic photos.*

*3- Publishing news, electronic photos or photographs, scenes, comments, statements or information even if true and correct.*

*Shall also be punished by imprisonment for a period of at least one year and a fine not less than two hundred and fifty thousand dirhams and not in excess of five hundred thousand dirhams or either of these two penalties whoever uses an electronic information system or any information technology means for amending or processing a record, photo or scene for the purpose of defamation of or offending another person or for attacking or invading his privacy.*

- Article 374/1 of the Penal Code:

*Shall be sentenced to detention for a maximum period of six months or to a fine not exceeding five thousand dirhams in case the libel or insult takes place through the telephone or facing the victim in the presence of others.*

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