

Combating intellectual property crimes and preventative measure

- **I cover the CPS high - tec crime strategy,**
- **Some problems we have encountered,**
- **Evidence,**
- **Expert witnesses,**
- **Court presentation**
- **Solutions**

High tec for the cyber crime means any crime where information or communications technology is used. This will include cases where computers or other devices are used as a crime tool, for example, distribution of child abuse images; cases where computers are the subject of the crime, for example, hacking offences; and where computers or other devices are used as storage and communication tools to facilitate the commission of an offence. This includes intellectual property crimes. Nearly every case in the UK nowadays has a computer-enabled element to it.

The CPS has a high - tec crime (HTC) strategy to ensure that there are national specialists prosecutors who can advise other prosecutors locally and also develop links with their counterparts in their local police force. Part of the strategy is also to raise the profile of High-Tec Crime amongst all CPS staff by developing a general awareness raising strategy.

In order to achieve this, the CPS set up the High-Tec crime project and I was appointed in January 2002 as the project manager to help develop and implement the CPS national policy on High-Tec crime.

The aim of the project is to develop and deliver a strategy to ensure that the Crown Prosecution Service (CPS) has the necessary levels of specialist expertise and general awareness to effectively prosecute cases involving High-Tec crime issues.

I have designed and developed HTC training courses to equip a specialist group of prosecutors with the skills and knowledge to conduct high Tec crime prosecutions effectively. I am presently designing and developing a training package for prosecutors on intellectual property crime and how to prosecute it.

This is done by them learning how computers and Internet services work, understanding what expert witnesses are talking about and be able to advise the police on the investigation of High-Tec crime, and the collection and protection of the integrity of digital evidence within the UK and abroad. Prosecutors need to be able to determine the most appropriate jurisdiction for a prosecution in cross border crime matters and be able to use the latest technology in order to present that evidence at court. This may mean in some cases the judge, jury and counsel each having a computer screen before them at court on which evidence is displayed.

High Tec crime training needs to be continuously developed to take account of the changing technology. The First CPS High-Tec crime course was held in November 2002, and we have presently trained over 120 prosecutors located throughout England and Wales. The aim is for each CPS area to have at least one High-Tec crime specialist and in each of our 42 Area offices; in most offices we have more than one.

If the present trend continues and there does not appear to be any reason why it will not, then in the long term all prosecutors will need to have an understanding of high Tec crime issues. Furthermore, as technology develops so also the training and guidance on such issues will also need to develop.

Problems we have encountered:

Evidence

You may wonder how computer related evidence e.g. data stored in computer are dealt with in criminal intellectual property trials.

Answer: Computer Evidence is like any other evidence, it must be: **admissible, authentic, accurate, complete and convincing to juries.** Computer Evidence in the UK is admissible if it conforms to a series of laws and rules, and fairness in acquisition and disclosure.

Computer Evidence authentic: The questions you need to ask are - can we explicitly link files, data to specific individuals and events?

Computer Evidence accurate: reliability of computer, (process not data content) can we explain how an exhibit came into being? Continuity of evidence what does the computer system do? What are its inputs? What are the internal processes? What are the controls?

Computer Evidence complete: tells within its own terms a complete story of particular circumstances.

Computer Evidence convincing: to juries have value a subjective, practical test of presentation. For example if there are grounds to believe that the computer was not working properly then the evidence will not be admissible.

In essence computer evidence is dealt with, as would any other documents. The prosecution will have to prove that the document is authentic and its contents are admissible. Once computer evidence is authentic and admissible the courts should assume that the computer is working properly, unless the defence raise the issue as to the reliability of computer evidence. The onus is in my view on the defence to state whether they are arguing the issue. Once raised the prosecution have to deal with it, i.e. by obtaining a statement certifying that the computer involved in the offence had been tested by an expert or someone who had knowledge of the computer and that they were satisfied that the computer was working properly.

Expert witness

Common Problems we have found in instructing Experts

- Finding an expert!
- Establishing whether they *are* an expert!
- Can you understand them?
- Can they understand you?
- Defining the issues you want to be covered
- And understanding what they cannot cover!

Expert evidence usually consists not only of a description of scientific facts, observations and processes, but also of an opinion as to what these mean in the context of the case in question. In UK criminal trials opinion evidence is usually inadmissible. However, the opinion of an expert forms an exception to this rule, where the issues that the court is required to determine are far removed from the court's experience and knowledge.

"The first question that prosecutors need to ask is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This may be divided into two parts:

Is the subject matter of the opinion such that a person without instruction or experience in the area, would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge and experience in the area. Also does the subject matter of the opinion form part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience.

The **second question is** whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court.

There is therefore no specific requirement in the UK for expert witnesses to have qualifications. What is required is that the expert can due to experience, study or a combination of both provide valuable opinion on an issue that the court cannot by itself resolve.

Generally speaking, the justice system is not well placed to assess the expertise of a witness. As a result these issues are normally resolved by the prosecution and defence calling their own experts to challenge the opinions provided by the opposite side. Concerns about the true value to be put on an expert are normally only known by those in the same scientific field rather than lawyers or the criminal justice system.

What is expected from an Expert

Above all else the evidence that the expert provides must include three things: it must be

- . Credible;
- . Impartial; and
- . Clear.

Credibility is essential. Justice as a whole needs to be confident that the person claiming expertise and assisting the court has the quality, capability and power to be believed. One aspect of this is in relation to the knowledge that they have gained through academic studies or through experience.

An expert witness must also be **independent and impartial**. An expert witness owes a duty to the court, not to the client. The expert witnesses should identify and bring attention to any weakness or limitation on the evidence that is provided. As a prosecutor I would want to be aware of any alternative explanations, not just the best, or the one that I am hoping to hear.

In addition, changes of opinion or unanticipated concessions made during cross-examination causes serious problems. Prosecutors need to know in advance what the problems are, as it is too late to resolve them after cross-examination, when the case will have generally been damaged beyond repair.

Finally the whole purpose of calling expert evidence is to assist the justice system as a whole to understand something that they cannot understand by themselves. It is essential for the expert evidence to be **clear**, concise and free from terms that few people, apart from other experts will understand.

Court Presentation

Presentation is important if lawyers, judges and, more importantly from a prosecutor's view; the jury is to give expert evidence the weight it deserves.

Presentation of evidence to the Judge and jury needs to be:

visual, computer demonstrations, video demonstration, computer graphics etc.

We will use an agreed glossary of terms for the terminology we use.

The main thing is to keep it simple. Ask yourself if a child of 11 or 12 would understand the explanation

7 key elements to secure a successful prosecution:

- Training for Judges, prosecutors and police.
- Early contact between police and prosecutors, and then constant advice and contact between them throughout the case.
- Early input by expert witness if you are going to use one.
- The presentation of high tec crime cases needs to be jargon free, and there should be a visual presentation of the evidence.
- De-brief involving all parties after completion of big cases - learn lessons – establish knowledge base. There is then a need to let other prosecutors and police officers know about the lessons you have learnt.
- A global problem needs a global solution and that is a global framework for high tec crime and I think we have that in the European Union Cyber crime Convention. Criminals do not see the borders on the internet as law enforcement do. It is right that we respect each others national borders but we need to learn to cooperate and effectively work with each other high tec crime training, a global network of prosecutors and all nations using the Cyber crime Convention as a framework for high tec crime cases all equip us to fight cybercrime.
- There is a need for a global network of high tec crime prosecutors. High tec crime is a global crime that affects us all; the solution to it is also global. The Crown Prosecution Service in partnership with the International Association of Prosecutors (IAP) has initiated the setting up of an Global E -Crime network (GPEN). An outline detailing the aims of GPEN is on page 6. GPEN will be launched at the IAP annual conference in Singapore in August 2008.

ESTHER GEORGE
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Global Prosecutors E-Crime Network

Aim:

To establish a Global E-Crime Prosecutors Network , Virtual European E-Crime Prosecutors College and the formation of an International library of e-crime material. This will enable e –crime prosecutors around the world to learn and benefit from sharing information, experiences, and strategies with each other, resulting in enhanced international cooperation.

Background:

There has been unprecedented growth in the use of the internet. In the UK in May 2006 ten million homes were connected to the internet. This is up from a figure of 6 million the previous year. A survey last year found that 33 million people now use the internet. There is an ever-increasing convergence of technologies; in addition to personal computers people are now accessing the internet via mobile phones and TV set top boxes. Therefore, more people are using technology routinely in their daily lives and the range of technological products available to them is increasing.

This has clear implications for law enforcement and prosecution agencies because criminals are aware of and are exploiting the opportunities that information and communications technology provides. On the internet there are no global boundaries for criminals and it is widely recognised that e-crime is the most rapidly expanding form of criminality. The technical nature of such cases is increasing and so is the availability of the tools to do so, and an increasing number of sophisticated international attacks. It is therefore essential that prosecutors are able to effectively prosecute such cases and advise police officers during the investigation.

In e-crime matters the police are encouraged to contact prosecutors as early as possible in the investigation. This is occurring quite frequently and this team work approach is the way ahead.

Prosecutors have to be in a position to add value to the police investigation.

For the purposes of this paper e-crime, high tec or cyber crime will mean any crime where information or communications technology is used. This will include cases where computers or other devices are used as a crime tool, for example distribution of child pornography, cases where computers are the victims, for example hacking offences and where computers or other devices are used as storage and communication tools to facilitate the commission of an offence. Nearly every case will have a computer-enabled element to it.

Benefits of the network:

The establishment of an e-crime network, the development of training courses for prosecutors and the formation of an International library of e-crime material will:

1. The network will encourage enhanced international cooperation in the e-crime arena which will be of benefit to all member countries.
2. Law enforcement remains hampered by national borders and precious resources are wasted by duplication of training. GPEN will have a major impact on the effective prosecution of e-crime by improving the exchange of information, reducing duplication and significantly raise analytical and prosecuting capacity.
3. A global e-crime prosecutor's network will enable all jurisdictions to develop a co-ordinated approach for dealing with e-crime that supports effective prosecutions and promotes the Cybercrime Convention. The proposed network will not complete with the 24/7 protocol or normal mutual legal assistance. E-crime specialists nominated as a country's point of contact will be responsible for any necessary domestic liaison.
4. There is a global need for training and standardisation of legal and procedural standards in dealing with e-crime matters. Training of prosecutors to prosecute e-crime cases is a priority area for international efforts against cyber crime. The network will develop appropriate training courses to train prosecutors who will be able to train their colleagues.
5. The network will enable prosecutors around the globe to exchange crucial information and data quickly and efficiently.

For further information about the Global E-Crime Prosecutors Network please contact:

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