

Introduction to Cybercrime: identification and specification

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- Specific Crimes:

- **Offences related to child pornography: definition and forms**
- **Offences related to infringements of copyright and related rights: definition and forms**

1. INTRODUCTION

Making use of the unlimited possibilities for exchange and dissemination of the information offered by Internet, both these types of crimes - *infringements of copyright and related rights and child pornography* – can be much easier committed.

The advantages of using Internet to product, distribute or access such materials are obvious since they can be available for many users all over the world and at low costs.

Child pornography harms the children used to product such materials and it makes those children victims every time when the images are viewed. In this way all children are showed as objects for sexual exploitation.

Thus criminalizing the unlawful production, dissemination and possession of child pornography through the computer systems is an urge.

Another significant area concerning the illegal activities committed by using computer systems is infringements of intellectual property, which are among the most commonly committed offences on the Internet. Reproduction and dissemination of protected works through Internet, without the approval of the copyright holder, is extremely frequent.

2. THE COUNCIL OF EUROPE CONVENTION ON CYBERCRIME (ETS 185)

The efforts of the international community to respond to these challenges have been materialized in adopting in 2001 the Convention on cybercrime. The treaty has been developed by the Council of

Europe in cooperation with Canada, Japan, South Africa and the United States of America and it was opened for signature in Budapest in 23.11.2001 and entered into force on 1.07.2004.

The Convention is open to any country around the world that may seek accession. Being a valuable instrument many countries, including Romania, have used the Convention in drafting their national legislations on cybercrime. Currently, it is the only international treaty that defines computer offences, contains specific procedural law and international cooperation provisions, aiming principally at:

- Harmonizing the domestic criminal substantive law elements of offences and connected provisions in the area of cybercrime;
- Providing for domestic criminal procedural law powers necessary for the investigation and prosecution of such offences as well as other offences committed by means of a computer system;
- Setting up a fast and effective framework for international cooperation.

The Convention covers a broad range of criminal offences, namely: Title 1 - Offences against the confidentiality, integrity and availability of computer data and systems, which requires criminalization of illegal access, illegal interception, data interference, system interference and misuse of devices; Title 2 covers computer-related offences (computer-related forgery and computer-related fraud); Title 3 criminalizes content-related offences (offences related to child pornography) and Title 4 offences related to infringements of copyright and related rights.

2. CHILD PORNOGRAPHY

The attempt to criminalize child pornography has been seen in some opinions as a pretext for introducing rules to control global network and an intrusion into the private life of Internet users or an infringement of the freedom of expression.

Despite such opinions it has been generally accepted that protection of children cannot represent a control and it is important to create a security online environment for them. In such cases the legal interest to protect children takes priority to the interest to protect freedom of expression

International organizations, states, governments, NGO-s have been deeply concerned about this issue and the efforts to fight against child pornography have been materialized in some important international documents:

- *The International Labour Organization's Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).*
- *The United Nations' Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (2000).*
- *The Council of Europe Convention on Cybercrime (2001).*
- *The Council of EU Framework Decision 2004/68 of 22 December 2003 on combating the sexual exploitation of children and child pornography.*

There is no doubt that child pornography is a serious threat that harms children while children should be always protected. This threat has been in last years an issue of great concern to international community considering that production and distributing of child pornography using computer systems is one of the most dangerous *modus operandi*.

Using the Internet production, storage, transmission and retrieval of information can flow with an unprecedented speed and low visibility. It is therefore very important that states to provide adequate legislation, which criminalizes child pornography in all its manifestations.

Many countries do not have adequate legislation on child pornography and this will prevent those countries not only to efficiently fight against this phenomenon at national level but also to cooperate at international level in an investigation of a child pornography case.

3. 1. Definition

The efforts to define child pornography has raised controversial opinions on aspects like consent, perception and reality, the relevance of context, the importance of differing moral, religious, social economic and cultural factors and often it was invoked the principle of freedom of expression.

Even sometimes the definitions of child pornography may seem similar there are differences in understandings and also it has many implications for law enforcement. For example, in many countries, legal definitions of pornography refer to definitions of obscenity that identify a wide range of different images, only some of which may be illegal. This limits the response of law enforcement.

Similarly, in some countries it is assumed that there is no legal basis for the police to take action against the abusers and exploiters of a child if that child has reached the legal age of consent, which may be below 18.

It is very difficult to agree on a universally accepted definition of what child pornography is, but what is important at the end is to criminalize all the manifestations of child pornography and provide adequate sanctions. This is the way that countries can achieve a common foundation in order to obtain the dual criminality basis for mutual assistance in criminal matters.

3.2. Child pornography under Article 9 of the Convention of cybercrime

Article 9 of the Convention seeks to strengthen protective measures for children, including their protection against sexual exploitation covering unlawful production or distribution of child pornography by use of computer systems.

Most of the national legislations contain provisions that criminalize the offence of child pornography when is committed by traditional means. Because the Internet offers unlimited opportunities for trading such material, it was strongly felt that specific provisions in an international legal instrument were essential to combat this new form of sexual exploitation and endangerment of children. It is widely believed that such material and on-line practices, such as the exchange of ideas, fantasies and advice among paedophiles, play a role in supporting, encouraging or facilitating sexual offences against children (Exp. Report, 93).

According to the Convention each party should establish as a criminal offence: *producing for the purpose of distribution, offering or making available, distributing or transmitting, procuring for oneself or for another person child pornography through a computer system; possessing in a computer system or on a computer-data storage medium of child pornography.*

Under Convention it is also required to be defined the terms " child pornography" and "minor".

The term "child pornography" includes pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct.

The term "minor" refers to persons under 18 years of age. A Party may require a lower age-limit, which shall be not less than 16 years.

3.3. Legislation on child pornography in Romania

Before ratifying the Convention child pornography was already incriminated in Romania by other two laws, namely, Law no. 678/2001 to prevent and combat trafficking in persons and Law no. 196/2003 on prevention and combating pornography or some provisions from the Criminal Code.

Law 678/2001 for prevention and combating of trafficking human beings, for example, establishes as an offence the acts of: *showing, selling or spreading, renting, distributing, manufacturing or keeping with the intent of spreading objects, movies, photos, film slides, emblems or other visual devices, which show positions or sex acts of pornographic nature, which present or imply under-aged people younger than 18 years, or importing or transmitting such objects to a carrier or distributor for their trading or publishing.*

In order to harmonize the Romanian legislation with the provisions of the Convention on cybercrime in 2003 it was adopted Law 161. TITLE III of this Law regulates the combating and prevention of cybercrime by implementing specific measures to prevent, discover, and punish the offences committed through computer systems.

It establishes special offences committed through a computer system:

- *production of child pornography for the purpose of distribution,*
- *offering or making available*
- *distributing or transmitting*
- *procuring for oneself or for another person child pornography through a computer system or*
- *possession, without right, child pornography in a computer system or in a computer-data storage medium.*

According to the Law the term *“pornographic materials with minors”* refer to *any material presenting a minor with an explicit sexual behaviour or an adult person presented as a minor with an explicit sexual behaviour or images which, although they do not present a real person, simulates, in a credible way, a minor with an explicit sexual behaviour.*

Regarding investigation of these crimes within the Directorate for Combating Organized Crime and Antidrug of the Romanian Police there is a special unit for cybercrime, which deals with child pornography on Internet.

Statistics provided by this unit showed that in 2006 there have been investigated 10 cases related to images distributing or downloading from the Internet and teenagers who made movies and posted on Internet.

There were no cases of producing child pornography material in Romania.

It can be concluded that fortunately child pornography offences are not very spread in Romania.

4. INFRINGEMENT OF COPYRIGHT AND RELATED RIGHTS

4.1. Convention of cybercrime

Infringements of intellectual property rights, in particular of copyright, are among the most commonly committed offences on the Internet, which cause concern both to copyright holders and those who work professionally with computer networks. The reproduction and dissemination on the Internet of protected works, without the approval of the copyright holder, are extremely frequent (Exp. Report, 107). Thus the Convention requires Parties in Article 10 to establish as criminal offences under domestic law the infringement of copyright and related rights taking into account the obligations provided by the relevant international documents in the area, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

4.2. Situation in Romania

Offences related to infringements of copyright and related rights are covered in Romania by Law No. 8/1996 on copyright and related rights (amended several times in order to harmonize the Romanian legislation with the European Union *acquis* on IPR). It is a very extensive law covering many issues related to IPR.

The law provides among other offences:

- *making available to the public including by Internet or other computer networks the protected work, without the consent of the owner of the copyright or other related rights so that the public can access them anytime and anywhere individually;*
- *unauthorised reproduction of computer software in any of the following ways: install, storage, running or execution, display or intranet transmission;*
- *distributing, importing in order to make available to the public so that they can be accessed anytime and anywhere, especially individually, without right, by digital technology, the protected*

works of which the information in electronic form on copyright or related rights were removed or altered without authorisation (Article 143 paragraph b).

Infringement of copyright and related right represents a problem for the Romanian authorities, most of the offences that have been prosecuting in the last years referring to unauthorized reproduction on computer systems of computer games, which are rented in internet café, as well as counterfeiting of CDs and DVDs with music and movies (sometimes downloaded from Internet).

Statistics¹ showed that during 2005, the Romanian Police dealt with a total 3.326 frauds in the Intellectual Property Rights area of which:

- 501 offences under the Law no.84/1998 (30,13%);
- 158 offences incriminated by the Law no. 11/1991 regarding the unfair competition (92,69%);
- 1978 offences under the Law no.8/1996 regarding the copyright;
- 44 offences under the Law no.504/2002-Audiovisual Law (29,41 %);
- 309 offences regarding the fraud related to the quality of goods (26,12%);
- 336 other offences.

Most of the offences refer to unauthorized reproduction on computer systems of computer games, which are rented in internet café as well as counterfeiting of CDs and DVDs with music and movies some of them downloading from Internet.

Some examples of case investigated:

P.M.R. from Bucharest produced for commercial purposes and offered for sale pirated goods. He sold them on a web page.

- items seized: 13 049 DVDs and CDs and 5 computers used for writing the DVDs and CDs.
- S.A.L. from Timisoara produced and offered for sale video grams and pirated computer programs.
- items seized: 5532 CDs and DVDs (containing movies, music and computer programs), 8 hard-disks, 6 CD writers, 2 catalogues produces for advertising the CDs, 136 stickers containing the titles of the movies/music, 2250 blank CDs and 1700 blank DVDs.

D.C. from Iasi offered for sale or rent pirated products through public announcements, using a web page.

- Following the domicile search, the police seized two computers (including CD and DVD writers) used for piracy, as well as over 5000 CDs and DVDs used as sources for the pirated copies

¹ Statistics provided by the competent department of the Prosecutor Office of the High Court of Cassation and Justice

Committing such crimes in Romania has been increasing. However, accurate statistics are not available and therefore a PHARE Program 2005/017-553.03.05 with Danish partners aims at strengthening the capacity building of Romania for protecting IPR having also the objective to create a database for Public Ministry, Ministry of Justice, Romanian Police and other institutions.

Special measures have been required in order to give a better protection of intellectual property.

In June 2005, based on the agreement of the institutions involved, "The Action Plan on urgent measures with a view to improve the enforcement in the area of IPR (2005-2007)", which focuses on:

- improving the activity of the Romanian institutions with prerogatives in the area of IPR;
- achieving an efficient cooperation between the public institutions and the organizations with specific prerogatives in the field of IPR;
- improving the legal framework in the area of IPR;
- organizing seminars and professional training courses

It should be noted that in 2006 in Bucharest it was organized the Eastern Europe and Central Asia Regional Congress on Combating Counterfeiting and Piracy - 11-12 July 2006. On this occasion it was adopted "The Bucharest Declaration", which provided the establishment of a National IP Strategy, with the assistance of World Intellectual Property Organization, and the undertaking of a comprehensive Action Plan.

The purpose is to ensure that Romanian intellectual property infrastructure and enforcement capacity are compatible with the mechanisms of the European Union and also to establish a "Working Group" to identify IP concerns, trends and future actions.

The improved effectiveness of government agencies as demonstrated by the increased number of seizures of counterfeit and pirated goods and enhanced efficiency in investigating, prosecuting and judging IP cases.

As a result the Romania Monitoring Report from May 2006 reflected:

- the new legislation that allows *ex-officio* investigation and prosecution of IPR crimes through a specialised department in the Prosecutor's Office of the High Court of Cassation and Justice;
- the role of the Prosecutor's Office as central coordinating body has been strengthened;

- a specialized department within the Prosecutor's Office was created that monitors the complex causes investigated by the prosecutor's offices and by the Police;
- exchanging information, coordinating and cooperating between all institutions and law enforcement authorities have been improved;
- strong efforts have been made in order to improve communication between the institutions and it was concluded a Protocol on cooperation between the institutions responsible.

The conclusion of the Monitoring Report: The Significant progress has been made in the area of protection of intellectual and industrial property rights.

5. CONCLUSIONS

Considering the international dimension of cybercrime it can be concluded that there is not possible to succeed in this fight by a country alone but only cooperating internationally. But we know that cooperation depends on countries legal systems and harmonization between the different national legislations. Therefore, states must provide adequate legislative framework that address child pornography in all of its manifestations and through all of the means by which these offences can be committed and also infringements of copyright.

In order to combat these types of crimes as well as other forms of cybercrime it is essential for all countries to create the adequate legal framework, both nationally and internationally, capable of providing the legislative and investigative tools for fighting cybercrime taking into account its complexity.

Using the Council of Europe Convention on cybercrime in the process of drafting national legislations it can be achieved international standards on the area and an efficient framework for fighting cybercrime.