

## **Tutorial 5 – CMA, security and anonymity/privacy**

The Computer Misuse Act 1990 introduced new offences that couldn't previously be prosecuted. It was amended by the Police and Justice Act 2006 (s3 and s3A) and the Serious Crimes Act 2015 (s3ZA). Unauthorised access is defined in s17. The Act is here <https://www.legislation.gov.uk/ukpga/1990/18/contents>

### **1. Interpretation of the CMA**

- a. How many computers are involved in Section 1(1)?
- b. Does the offence in Section 1(1) require a Mens Rea?
- c. What are the implications of Section 1 (2)?
- d. Give examples of articles relevant to Section 3A
- e. Some such tools are known as "duel use" tools. What does this mean?
- f. Does the CMA apply to (i) external hackers and (ii) internal staff?

### **2. Case discussion**

- a. [R. v Bow St Magistrates Courts & Allison] Ojomo was a credit analyst for American Express. She could access all customers' accounts but was only assigned certain accounts. She gave information from the other accounts to Allison. This was used to encode other credit cards and supply PIN numbers which could then be fraudulently used to obtain large sums of money from automatic teller machines. Ojomo said "Yes, I know that I was not authorised to access that data but I was authorised to access other data of the same kind."  
Q: Has either Ojomo or Allison has committed an offence? Why?
- b. A penetration tester, Cuthbert donated £30 on a *Typhoon Haiyan* charity website, but became concerned at its slow response and poor graphics. He felt it might be a “phishing” site that could misuse the name, address and credit card he had supplied. He tested the site with a directory traversal test – he re-formed the URL to see if the security settings on the remote website would allow him access beyond the web root. His attempt was rejected, so he thought no more of the matter. His attempt triggered an alarm in an intrusion detection system (IDS) installed by British Telecom, the directory traversal being an obvious alerting signature. In a police interview, he suggested that the activity was caused by a proxy server which had been part of the ABN Ambro testing environment. When challenged, he told the true story.
  - i. Will Cuthbert be prosecuted?
  - ii. Will he be convicted?
  - iii. What are the consequences?

### **3. CMA consequences**

- a. What are the implications of the Computer Misuse Act for an organisation's security? What might organisations have to do to ensure they can take action under the CMA if necessary?

### **4. Anonymity online**

- a. YikYak was launched in 2013 and closed down in May 2017. It was popular with school and college students. It was closed because the user base was dwindling and it was associated with cyber-bullying. Secret, another anonymous app, shut down in 2015 after many complaints. Secret allowed users to create and use social chat rooms linked only by geographical location. All posts were anonymous. The original motivation was to connect people across campuses, without having to know them. Other anonymous apps include Whisper, Jodel, and Candid.  
In 2014 Mark Andreessen, founder of Netscape, questioned whether it was ethical to invest in such products because of potential negative consequences for users. He said “Investors make choices every day. Many things don’t get funded that would make dollars but aren’t ethical, moral and/or legal”. On the other side of the argument the Whisper CEO said, “How do you decide who to protect and who to out?” Many consider that you should not focus solely on the negative side of a product when deciding about its utility as many apps can be used for bad purposes.

- i. Was there anything illegal about these applications?
- ii. Is there a place for anonymous apps that allow people to connect with others?
- iii. Identify an ethical dilemma in this situation

## Computer Misuse Act 1990 (excerpts)

### Section 1

Unauthorised access to computer material

(1) A person is guilty of an offence if

- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer, or to enable any such access to be secured;
- (b) the access he intends to secure, or to enable to be secured, is unauthorised; and
- (c) he knows at the time when he causes the computer to perform the function that that is the case.

(2) The intent a person has to have to commit an offence under this section need not be directed at

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

(3) A person guilty of an offence under this section shall be liable

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### Section 2

Unauthorised access with intent to commit or facilitate commission of further offences

### Section 3 (Amended by Police & Justice Act 2006)

Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc

### Section 3ZA (Amended by Serious Crimes Act 2015)

Unauthorised acts causing, or creating risk of, serious damage

(2) damage is of a “material kind” for the purposes of this section if it is: ... to human welfare in any place ... to the environment in any place ... to the economy of any country ... to the national security of any country

### Section 3A (Introduced by Police & Justice Act 2006)

Making, supplying or obtaining articles for use in offence under section 1, 3, or 3ZA

- (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article intending it to be used to commit, or to assist in the commission of, an offence under section 1, 3 or 3ZA.
- (2) A person is guilty of an offence if he supplies or offers to supply any article believing that it is likely to be used to commit, or to assist in the commission of, an offence under section 1, 3 or 3ZA.
- (3) A person is guilty of an offence if he obtains any article a)intending to use it to commit, or to assist in the commission of, an offence under section 1, 3 or 3ZA, or b) with a view to, its being supplied for use to commit, or to assist in the commission of, an offence under section 1, 3 or 3ZA.
- (4) In this section "article" includes any program or data held in electronic form.

### Section 17

(5) Access of any kind by any person to any program or data held in a computer is unauthorised if -

- (a) he is not himself entitled to control access of the kind in question to the program or data; and
- (b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled.