

BCT 421 LEGAL AND PROFESSIONAL ETHICS IN COMPUTING

Lesson 7-computer misuse Act 1990

Computer Misuse Act 1990

1. (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;

(b) the access he intends to secure is unauthorized; 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 on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

2.--(1) A person is guilty of an offence under this section if he commits an offence under section 1 above ("the unauthorised access offence") with intent--

(a) to commit an offence to which this section applies; or

(b) to facilitate the commission of such an offence (whether by himself or by any other person); and the offence he intends to commit or facilitate is referred to below in this section as the further offence.

(2) This section applies to offences--

(a) for which the sentence is fixed by law; or

(b) for which a person of twenty one years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or, in England and Wales, might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980).

(3) It is immaterial for the purposes of this section whether the further offence is to be committed on the same occasion as the unauthorised access offence or on any future occasion.

(4) A person may be guilty of an offence under this section even though the facts are such that the commission of the further offence is impossible.

- (5) A person guilty of an offence under this section shall be liable--
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

3.--(1) A person is guilty of an offence if--

(a) he does any act which causes an unauthorised modification of the contents of any computer, and

(b) at the time when he does the act he has the requisite intent and the requisite knowledge.

(2) For the purposes of subsection (1)(b) above the requisite intent is an intent to cause a modification of the contents of any computer and by so doing--

(a) to impair the operation of any computer;

(b) to prevent or hinder access to any program or data held in any computer; or

(c) to impair the operation of any such program or the reliability of any such data.

(3) The intent need not be directed at--

(a) any particular computer;

(b) any particular program or data or particular kind; or

(c) any particular modification or a modification of any particular kind.

(4) For the purposes of subsection(1)(b)above the requisite knowledge is knowledge that any modification he intends to cause is unauthorised.

(5) It is immaterial for the purposes of this section whether an unauthorised modification or any intended effect of it of a kind mentioned in subsection (2) above is, or is intended to be, permanent or merely temporary.

(6) For the purposes of the Criminal Damage Act 1971 a modification of the contents of a computer shall not be regarded as damaging any computer or computer storage medium unless its effect on that computer or computer storage medium impairs its physical condition.

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

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Jurisdiction

4.--(1) Except as provided below in this section. it is immaterial for the purposes of any offence under section 1 or 3 above--

- (a) whether any act or other event proof of which is required for conviction of the offence occurred in the home country concerned; or
- (b) whether the accused was in the home country concerned at the time of any such act or event.

(2) Subject to subsection (3) below, in the case of such an offence at least one significant link with domestic jurisdiction must exist in the circumstances of the case for the offence to be committed.

(3) There is no need for any such link to exist for the commission of an offence under section I above to be established in proof of an allegation to that effect in proceedings for an offence under section 2 above.

(4) Subject to section 8 below, where--

- (a) any such link does in fact exist in the case of an offence under section I above; and
- (b) commission of that offence is alleged in proceedings for an offence under section 2 above; section 2 above shall apply as if anything the accused intended to do or facilitate in any place outside the home country concerned which would be an offence to which section 2 applies if it took place in the home country concerned were the offence in question.

(5) This section is without prejudice to any jurisdiction exercisable by a court in Scotland apart from this section.

(6) References in this Act to the home country concerned are references--

- (a) in the application of this Act to England and Wales, to England and Wales
- (b) in the application of this Act to Scotland, to Scotland; and
- (c) in the application of this Act to Northern Ireland, to Northern Ireland.

5.--(1) The following provisions of this section apply for the interpretation of section 4 above.

(2) In relation to an offence under section 1, either of the following is a significant link with domestic jurisdiction--

- (a) that the accused was in the home country concerned at the time when he did the act which caused the computer to perform the function, or
- (b) that any computer containing any program or data to which the accused secured or intended to secure unauthorised access by doing that act was in the home country concerned at that time.

(3) In relation to an offence under section 3, either of the following is a significant link with domestic jurisdiction--

- (a) that the accused was in the home country concerned at the time when he did the act which caused the unauthorised modification or
- (b) that the unauthorised modification took place in the home country concerned

6.--(1) On a charge of conspiracy to commit an offence under this Act the following questions are immaterial to the accused's guilt

- (a) the question where any person became a party to the conspiracy; and
- (b) the question whether any act, omission or other event occurred in the home country concerned.

(2) On a charge of attempting to commit an offence under section 3 above the following questions are immaterial to the accused's guilt--

- (a) the question where the attempt was made; and
- (b) the question whether it had an effect in the home country concerned .

(3) On a charge of incitement to commit an offence under this Act the question where the incitement took place is immaterial to the accused's guilt.

(4) This section does not extend to Scotland.

[material omitted]

8.--(1) A person is guilty of an offence triable by virtue of section 4(4) above only if what he intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2) A person is guilty of an offence triable by virtue of section 1 (1A) of the Criminal Law Act 1977 only if the pursuit of the agreed course of conduct would at some stage involve--

- (a) an act or omission by one or more of the parties; or
- (b) the happening of some other event; constituting an offence under the law in force where the act, omission or other event was intended to take place.

(3) A person is guilty of an offence triable by virtue of section 1 (1A) of the Criminal Attempts Act 1981 or by virtue of section 7(4) above only if what he had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(4) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.

(5) Subject to subsection (7) below, a condition specified in any of the subsections (1) to (3) above shall be taken to be satisfied unless not later than rules of court may provide the defence serve on the prosecution a notice--

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
- (b) showing the grounds for that opinion; and
- (c) requiring the prosecution to show that it is satisfied.

- (6) In subsection (5) above "the relevant conduct" means--
- (a) where the condition in subsection (1) above is in question, what the accused intended to do or facilitate;
 - (b) where the condition in subsection (2) above is in question, the agreed course of conduct; and
 - (c) where the condition in subsection (3) above is in question, what the accused had in view.
- (7) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (5) above.
- (8) If by virtue of subsection (7) above a court of solemn jurisdiction in Scotland permits the defence to require the prosecution to show that the condition is satisfied, it shall be competent for the prosecution for that purpose to examine any witness or to put in evidence any production not included in the lists lodged by it.
- (9) In the Crown Court the question whether the condition is satisfied shall be decided by the judge alone.
- (10) In the High Court of Justiciary and in the sheriff court the question whether the condition is satisfied shall be decided by the judge or, as the case may be, the sheriff alone.

9.--(1) In any proceedings brought in England and Wales in respect of any offence to which this section applies it is immaterial to guilt whether or not the accused was a British citizen at the time of any act, omission or other event proof of which is required for conviction of the offence.

- (2) This section applies to the following offences--
- (a) any offence under this Act;
 - (b) conspiracy to commit an offence under this Act;
 - (c) any attempt to commit an offence under section 3 above; and
 - (d) incitement to commit an offence under this Act

Miscellaneous and general

10.--Section 1(1) above has effect without prejudice to the operation--

- (a) in England and Wales of any enactment relating to powers of inspection, search or seizure; and
- (b) in Scotland of any enactment or rule of law relating to powers of examination, search or seizure.

[material omitted]

12.--(1) If the trial on indictment of a person charged with--

- (a) an offence under section 2 above; or
- (b) an offence under section 3 above or any attempt to commit such an offence; the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 1 above if on the facts shown he could have been found guilty of that offence in proceedings for that

offence brought before the expiry of any time limit under section 11 above applicable to such proceedings.

(2) The Crown Court shall have the same powers and duties in relation to a person who is by virtue of this section convicted before it on an offence under section 1 above as a magistrates' court would have on convicting him of the offence.

(3) This section is without prejudice to section 6(3) of the Criminal Law Act 1967 (conviction of alternative indictable offence on trial on indictment).

(4) This section does not extend to Scotland.

[material omitted]

15. The offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply shall include--

- (a) offences under section 2 or 3 above;
- (b) any conspiracy to commit such an offence; and
- (c) any attempt to commit an offence under section 3 above.

[material omitted]

17.--(1) The following provisions of this section apply for the interpretation of this Act.

(2) A person secures access to any program or data held in a computer if by causing a computer to perform any function he--

- (a) alters or erases the program or data;
- (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- (c) uses it; or
- (d) has it output from the computer in which it is held (whether by having it displayed or in any other manner); and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.

(3) For the purposes of subsection (2)(c) above a person uses a program if the function he causes the computer to perform--

- (a) causes the program to be executed; or
- (b) is itself a function of the program.

(4) For the purposes of subsection (2)(d) above--

- (a) a program is output if the instructions of which it consists are output; and
- (b) the form in which any such instructions or any other data is output (and in particular whether

or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(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 to 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.

(6) References to any program or data held in a computer include references to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(7) A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer--

- (a) any program or data held in the computer concerned is altered or erased; or
 - (b) any program or data is added to its contents;
- and any act which contributes towards causing such a modification shall be regarded as causing it.

(8) Such a modification is unauthorised if--

- (a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and
- (b) he does not have consent to the modification from any person who is so entitled.

(9) References to the home country concerned shall be read in accordance with section 4(6) above.

(10) References to a program include references to part of a program.