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Computer crime: in particular, 2010 reform of the Spanish Criminal Code

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Summary

Introduction

I.- Concept of Computer Crime

II.- A reference to Comparative Law: in particular, European Union legislation

III.- The Spanish case: general situation and reform of 22 June 2010

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The difficulties in establishing laws in the face of a new phenomenon which is constantly evolving and changing, and which is evidently extremely complex.

The importance of defining the legal right or rights to be protected.

The different legislative techniques used.

However, the possibility of a series of common guidelines or standards.

1.- Concept of Computer Crime

A difficulty which needs to be addressed and resolved
How can we respond to this question?

Theoretical concept: an offence perpetrated using a computerised element, albeit a traditional crime or an offence proper to the information society propitiated by the technologies which are part of that society.

Legal concept: extractable from the Convention on Cybercrime (Budapest 23-11-2001).

And which assumes taking into consideration: a) specific techniques and modes of action. Thus “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a programme, performs automatic processing of

data and “computer data” is any representation of facts, information or concepts in a form suitable for processing in a computer system, including a programme suitable to cause a computer system to perform a function; and b) specific content.

In effect the Budapest Convention includes three groups of offences:

1) Relating to illegal computer techniques and courses of action

Which the Convention entitles “*Offences against the confidentiality, integrity and availability of computer data and systems*”.

And it describes the following:

*Illegal access: the access to the whole or any part of a computer system without right.

*Illegal interception: the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data.

*Data interference the deliberate and illegal damaging, deletion, deterioration, alteration or suppression of computer data without right.

*Interference in the system: the serious hindering deliberately and without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

*Abuse of devices: the production, sale, procurement for use, importation, distribution or otherwise making available of a device, including a computer programme, designed or adapted primarily for the purpose of committing of an offence by means of a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed.

2) Computer offences “stricto sensu”

*Computer forgery: when committed intentionally and without right the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether the data is directly readable and intelligible.

*Computer fraud: Acts committed intentionally and without right causing the loss of property to another person by:

a) any input, alteration, deletion or suppression of computer data; b) any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring without right, an economic benefit for oneself or for another person.

3) Offences relating to content

Offences of child pornography, against intellectual property and

similar rights.

From which the following definition arises: computer crimes are those which attack third party computer systems or data or which affect specific contents particularly vulnerable to attack with new technologies.

II.- A reference to Comparative Law: in particular, European Union legislation

A) Some ideas at a worldwide level

B) European legislation

C) Harmonisation of Criminal Law in the European Union, as a policy of approximation of European computer criminal law

- **Precedents**
- **Convention on Cybercrime Budapest 2001**
- **European Union Treaty of 2006: search for minimum common regulations**
- **Lisbon Treaty, from the Framework Decision to the Directive**
- **Implementation**

III.- The Spanish case: general situation and reform of June 2010

- **Dispersion and legislative insufficiency**
- **Computer Offences in the Spanish Criminal Code**
- **The reform:**

Introduction of “white hat hacking” (art. 197 CC)

Amplification of computer fraud (art 248 CC)

Improved cracking techniques: conduct is outlined better and a specific consideration is given to when it is committed by an organisation.

Defects: a generic difficulty and a specific title to regulate this type of criminal activity are lacking.

IV. Conclusions

- **Computer crime is among the two current trends of Criminal law**: an expansive criminal law vs the decriminalising position constructed largely by its “ultima ratio” nature.
- **The intrinsic difficulty of addressing classification** of illegal conduct: constant innovation and the need to complement criminal action with other branches of the law (civil, commercial, concerning telecommunications etc).
- **The legislative technique** proper to Computer Criminal Law: response to different legal rights requiring protection and the fact that almost all classic offences can be committed with the presence of a computerised element.
- **Global treatment** due to the importance of the question: first steps in police-judicial cooperation (procedural) at present, moving forward towards as much unification as possible in matters of substantive law.
