

## **The Computer Misuse Act 1990: reformed or deformed?**

**Joseph A. Cannataci**

Professor of Law and Head of the Lancashire Law School, University of Central Lancashire

Email: [jacannataci@uclan.ac.uk](mailto:jacannataci@uclan.ac.uk)

**Waheeda Bhai**

### **Abstract**

The UK Computer Misuse Act 1990 was one of the first attempts in Europe at legislating about computer crime at the national level. It remained an influential piece of legislation for many years, being cited as far away as Singapore and taken into careful consideration during the five years that it took to draft the Council of Europe's Cybercrime Convention (1996-2001). In spite of this pedigree, the Act has seen a remarkably small number of prosecutions and there have been various calls for its reform.

An All-Party Internet Group (APIG) sponsored a Private Member's Bill in 2004 but the attempt failed when Parliament was prorogued and it was only on the 8<sup>th</sup> November 2006 that the first round of significant reform made it to the statute book.

This paper traces the roots of the reform process and outlines the various issues that the recent amendments to the law were expected to address. It then moves forward to evaluate the extent to which the reform achieved actually solves the problems and/or whether it created new ones. One of the main areas where the original Computer Misuse Act was perceived to be problematic was the apparent inability of its Section 3 to cover Denial of Service Attacks. This lacuna was tackled head-on in Section 36 of the Police and Justice Act of 2006 yet the resulting rather loosely-worded clause was subjected to last-minute amendments which sought to introduce the notion of recklessness as an alternative to the intent to "impair operation" of a computer. Did Lord Northesk's intervention do the trick?

In addition to Denial of Service attacks dealt with in Section 36, the 2006 Act in Section 37 also introduces the new offence dealing with "Making, supplying or obtaining articles for use in offence". Sub-section (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 or 3." has come in for particular criticism. Is it truly so badly worded that, as has been alleged, it would criminalize the activities of computer professionals producing legitimate software testing tools? Some attempt at amendment was made during the passage of the Act but in reality, the extent to which the concerns of professional associations such as the British Computer Society have been met remains a moot point.

In attempting this analysis, the paper will also examine the extent to which the recent amendments to the Computer Misuse Act will bring English law in line with the Convention on Cyber Crime, thereby enabling the UK to ratify this increasingly important treaty. Compliance with the 2005 European Council Framework Decision on Attacks against Information systems will also be examined.