

Wonderchip spawn Wondercrime

What is the wonderchip? Could it indeed be the modern Frankenstein that would terrorize society which it was once meant to serve?

As the Information Age Revolution sweeps Sri Lanka, these questions are increasingly beginning to torment concerned lawyers, businessmen and policy makers who have begun to realize that drastic changes have to be made to our laws for the new information technology to not get out of hand.

Use of computers have become commonplace in our banks, super markets and most offices, as workers eagerly reach out to grab the facilities that the wonder chip offers them. Particularly in the banking environment, this massive shift in information technology has become inevitable with our banks. interacting with the international banking network. However, in this new exuberant financial and commercial world, not much thought is given to the potential for high-tech crime.

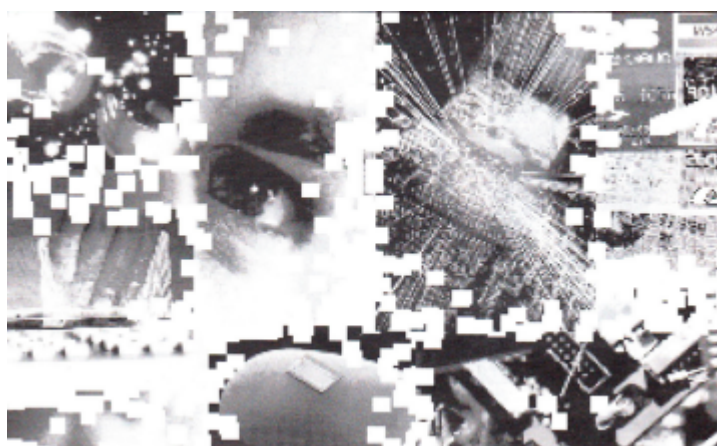
“Instances of computer crime and commercial fraud are taking place within our society even now, though they are being swept under the carpet,” notes Deputy Solicitor General Kolitha Dharmawardene. “It is imperative that the laws be updated to stop these computer pirates”, he says. DSG Dharmawardene is one of the many senior lawyers trying to stir Sri Lanka’s somewhat sluggish law reformers into taking some action on this matter. At present, our antiquated laws are in no position to deal with high-tech crime. Here are some examples of high-tech crime. Credit card frauds, where clone copies are made of credit cards and the user is given the credit while the actual owner of the card is billed is one instance. So too is obtaining money from a bank ATM machine after closing the account or having no funds in the account. In both these cases the culprit(s) manage to get away because deceiving a machine would not be within the conventional definitions of theft, cheating or criminal misappropriation in our Penal Code. Similarly, manipulating a cellular telephone device so as to enable A to communicate at the expense of B whose phone will be identified and accordingly billed is also not punishable by our present laws.

Deadlier instances of sophisticated commercial fraud is also possible where offenders will be able to escape scot free. For example, consider the following situation: A is the Securities and Investment Manager of company X. He is given

the authority to trade in securities on behalf of the company, to utilize company money, and to borrow when necessary for purposes of trading.

He utilizes all the available funds and borrows money which the company cannot repay, if the price of securities traded does not improve. A does this actually on the instructions of company Y who is a rival to company X and who plans to take over X when it is unable to repay debts in a declining market. In return Y promises A, a lucrative position and financial wealth. A is not liable to be punished by the law.

For the law to effectively deal with these innovative high-tech criminals, fundamental changes are necessary. The Sri Lankan Penal Code introduced in 1885, is based on the Indian Penal Code. At that time, the laws were focussed more towards human behaviour. While property was protected, the protection was extended only towards things that one could see, hear or touch, i.e, tangible property.



This attitude, understandable then but hopelessly out of date now, has still not changed. Property is not defined to include rights in property or actual physical intangible property like gas or electricity. The Sri Lankan Supreme Court has expressly rejected the view that electricity is property (Nagaiya Vs Jayaratne 28 NLR 467). The Court has held that special legislation will have to be brought in if the law is to be changed.

Meanwhile, there are some basic problems in the definition of the offences involving property too. Theft, Criminal Misappropriation and Cheating are defined in a very conventional manner that excludes innovative modern-day crime. Theft for example, requires the actual removal of property, while nowadays property is not removed but merely transferred.

Broad law reforms that correct these deficiencies have been proposed by concerned lawyers to our penal laws. Firstly of course, the definition of property has to be amended to include all property, real or personal, including incorporeal and other intangible property. Transfer of such property would also constitute theft within the legal meaning of the word. It is also proposed to introduce a new 'fraud' offence in Sri Lanka. According to this, whoever dishonestly defrauds any person, institution or the Government is said to commit fraud. Moreover, it has been suggested that the offence of forgery should also be expanded. A person commits forgery if he makes a false document with the necessary guilty intention'. This definition of 'document' so far conservatively defined, will be changed so as to include alteration of information in the magnetic strips of credit cards, telephone cards and ATS cards and the replication of such cards by a cloning process.

The new proposals include suggested amendments on how the law should deal with computer crime as well. The general offence of fraud is said to include computer fraud as well, but a special regime of criminal law protection for information stored or communicated through computers is thought necessary. This is because information has traditionally been not treated as property by the courts.

The amendments could be made either through a new chapter in the Penal Code or by a new Act. Unauthorized access to computers will be prohibited totally.

"It is this access that triggers off other crimes. We hope that by prohibiting this, 99.9% of the crimes would be controlled," comments DSG Dharmawardene.

Intercepting confidential information/computer tapping, introduction of computer viruses, manipulation of information etc., are also dealt with in these suggested amendments to the Penal Code.

The recent establishment of an Information Technology Law Centre by the Computer and Information Technology of Sri Lanka (CINTEC), is a part of this growing awareness that the law should deal adequately with high-tech crime. Sri Lanka should keep legal pace with the technology that she welcomes, or resign herself to pay the ultimate price demanded by "whiz kid" technology spiralling out of control.



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