

Hackers in Hong Kong and the attitude of Hong Kong Courts towards hacking



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Introduction



- We will address the following:
 - The known hacking problems in HK;
 - The attitude of the HK Courts in dealing with hackers

Hackers in Hong Kong



- The activities of hackers in Hong Kong can broadly be classified in the following categories: -
 - (a) Spammers;
 - (b) The Intruders;
 - (c) Denial of Service

Spammers



- Spamming is NOT an offence in itself under the laws of Hong Kong as in November 2000;
- Spamming has been defined as unsolicited E-mail. The Internet version of "Junk mail."

Spamming




- It is an attempt to deliver a message, over the Internet, to someone who would not otherwise choose to receive it. Almost all spam is commercial advertising
- This may attract criminal sanctions under the Personal Data (Privacy) Ordinance
- Sending large volume of unsolicited mails to one person may amount to criminal damage

The Intruders



- Send a virus to your computer while you are on line
- Obtain your login name and password, unknown to the owner of the login name
- Use that to gain access to the Internet, saving the monthly fee/PNET fees

The Intruders, act of sending a virus



- Criminal Damage, section 60 of the Crimes Ordinance, Cap 200
- In this subsection, "misuse of a computer" (□□□□) means-
 - (a) to cause a computer to function other than as it has been established to function by or on behalf of its owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;

The Intruders



- (b) to alter or erase any program or data held in a computer or in a computer storage medium;
- (c) to add any program or data to the contents of a computer or of a computer storage medium, and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it.

The Intruders, using login names and passwords of others



- Access to a computer with a dishonest intent, section 161 of the Crimes Ordinance, Cap 200
 - (1) Any person who obtains access to a computer-
 - (a) with intent to commit an offence;
 - (b) with a dishonest intent to deceive;
 - (c) with a view to dishonest gain for himself or another; or
 - (d) with a dishonest intent to cause loss to another,
 - whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

The Intruders



- (2) For the purposes of subsection (1) "gain" (□□) and "loss" (□□) are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and-
- (a) "gain" (□□) includes a gain by keeping what one has, as well as a gain by getting what one has not; and
- (b) "loss" (□□) includes a loss by not getting what one might get, as well as a loss by parting with what one has.

Denial of Service (DoS)



- Yahoo.com and Amazon.com;
- Sending massive data to one site within a short period of time;
- All resources taken up;
- Normal service denied;
- Offenders usually have grudges against target

DoS



- For example, ex-employee fired by the employer, business rival;
- Criminal Damage (section 60 of the Crimes Ordinance)
- Maximum penalty : 10 years

Approach of Hong Kong Courts



- HKSAR v Tsun Shui Lun
[1999] 2 HKC 547
- Release of the medical records of the Secretary for Justice to the press without the consent of SJ
- Charged with access to a computer with a dishonest intent
- Sentenced to 6 months imprisonment after trial in the magistracy

HKSAR v Tsun Shui Lun



- On appeal, the sentence was reduced to 100 hours of community service
- The Chief Judge has the following to say:
 - Not every kind of access into a computer constitutes an offence under section 161;
 - It is the *intent or purpose of the offender at the time of access* which must be looked at, not his intent or purpose at some later stage;

HKSAR v Tsun Shui Lun



- Section 161 catches acts preparatory to the commission of a crime or fraud. However it is not restricted to such acts
- A person making unauthorised access need not have any intention to commit a crime or fraud;

HK SAR v Tsun Shui Lun



- The meaning of the word 'gain' under section 161:-
 - is not confined to financial or proprietary benefits;
 - is wide enough to cover intangible benefits;
 - can be transient as opposed to permanent benefits;

HK SAR v Tsun Shui Lun



- includes the keeping of what one has or the getting of what one has not;
- is inclusive (as opposed to the word gain defined in section 8 of the Theft Ordinance) and casts an open net;
- includes information which the person obtaining access to a computer did not have before the access;

HK SAR v Tsun Shui Lun



- anticipates a benefit or advantage;
- does not necessarily include something which can be utilised or used

HK SAR v TAM Hei-lun & Others

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- D2 sent a virus to other internet users; obtained 127 login names and passwords
- He used them to gain access to the Internet
- He sold some compromised accounts to D1 for about HK\$3000

HK SAR v TAM Hei-lun & Others

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- D1 used the compromised accounts to gain access to the Internet
- D1 sold these accounts to 5 other persons and obtained a profit of HK\$1,500;

HKSAR v TAM Hei-lun & Others

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- D3 obtained compromised account from D2 for free and used them to gain access to the Internet
- D3 also set up a web page inviting the public to place order for infringing discs in MP3 format; there was a list of 300 songs available

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- D3 charged \$88 (1 disc), HK\$160 (2 discs) and HK\$210 (3 discs);
- Orders would be placed by e-mail and after making the infringing discs with CD-Rs, D3 mailed the discs to the customer
- He obtained over HK\$10,000

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■ D2

- 3 charges of criminal damage
- 12 charges of obtaining access to computer with a view to dishonest gain

■ D1

- 14 charges of obtaining access to computer with a view to dishonest gain
- 8 charges of dealing with proceeds of indictable offence

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- D3
 - 2 charges of obtaining access to a computer with a view to dishonest gain
 - 10 charges of making for sale or hire infringing copies of copyright works
- All defendants were of young age and had clear records;
- All pleaded guilty before a magistrate

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- D2 : 6 months imprisonment
- D1 : Detention Centre
- D3 : Detention Centre
- On appeal, the Court of Appeal dismissed the appeals of D1 and D3.
- D2 abandoned his appeal at the start of the appeal

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- Rogers VP said:-

- inappropriate to issue guidelines since there have been very few prosecutions under section 161;
- therefore the full range of crimes which would fall within 161 would not be known;

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- The considerations that a court would take in sentencing in section 60 and 161 offences
 - the loss and damage caused to the victims;
 - the gravity of the offence to the victim;
 - the purpose of the access;
 - any gain financially or otherwise to the person pertaining to the access

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- The act of accessing the computer of another person can in many aspects be likened to burglary
- Unless there are most unusual circumstances a non-custodial sentence would be inappropriate for offences under section 161

Conclusion



- We have relatively few prosecutions of hackers in HK;
- It is glad to see that the Courts have adopted a stringent approach towards hackers
- Better to NIP THEM IN THE BUD (a phrase used by the magistrate in TAM Hei-lun)