

ARTICLE:

A BRIEF OUTLINE OF THE POSITION IN URUGUAY IN RELATION TO CYBER CRIME LEGISLATION

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At present, there is a lack of legislation regulating and creating cyber crimes in Uruguay. The first Uruguayan provision that considered cyber crime was Law 16.002 dated 25 November 1988 (Ley Nº 16.002 del 25 de noviembre de 1988 - Se aprueban para los Incisos 02 al 13 las modificaciones al Plan de Inversiones Públicas para el período 1988-1989).

The provisions in articles 129 and 130 are relevant:

Artículo 129: La documentación emergente de la transmisión a distancia, por medios electrónicos, entre dependencias oficiales, constituirá, de por sí, documentación auténtica y hará plena fe a todos sus efectos en cuanto a la existencia del original transmitido.

Artículo 130: El que voluntariamente transmitiere a distancia entre dependencias oficiales un texto del que resulte un documento infiel, incurrirá en los delitos previstos por los artículos 236 a 239 del Código Penal, según corresponda.

Article 129: The documents emerging from the transmission at a distance by electronic means between government departments, constitute, in itself, full documentation and constitute authentic documentation in all its effects as to the existence of the original transmitted.

Article 130: Whoever voluntarily transmits the text of a document at a distance between departments that is unfaithful, will be guilty of the crimes provided by

articles 236 to 239 of the Penal Code, as appropriate. Later, in 1996, article 129 was amended by article 697 of Law 16.736 of January 5th 1996 in two ways: it replaced the term 'electronic means' with 'informatic and telematic means' and removed the expression 'between government departments'. This change meant the law became more widely applicable.

Article 697: La documentación emergente de la transmisión por medios informáticos o telemáticos constituirá de por sí documentación auténtica y hará plena fe, a todos sus efectos, en cuanto a la existencia del original transmitido. El que voluntariamente transmitiere un texto del que resulte un documento infiel, adultere o destruya un documento almacenado en soporte magnético, o su respaldo, incurrirá en los delitos previstos por los artículos 236 a 239 del Código Penal, según corresponda.

Article 697: The documents emerging from the transmission by computer science or telematic means will, constitute, in itself, full documentation and constitute authentic documentation in all its effects as to the existence of the original transmitted. Whoever voluntarily transmits a text which results in an unfaithful document, adulterates or destroys a document stored in magnetic support, or its backup, will incur in the crimes established in articles 236 to 239 of the Criminal Code, accordingly.

In 2003, Law No. 17.616 of 10 January 2003 on Copyright and Related Rights (Ley Nº 17.616 del 10 de enero de 2003 sobre Derecho de Autor y Derechos Conexos) expressly incorporated computer programs and

informatic creations into the Law on Copyright No. 9.739 of December 17th 1937 (Ley de Derechos de Autor N° 9.739 del 17 de diciembre de 1937). The 1937 law protects the author's rights in respect of all literary, scientific or artistic creation, and recognizes the author's property rights in respect of his thoughts, science or art.

Furthermore, Law N° 17.815 on commercial or noncommercial sexual violence against children, adolescents or incapables (Ley N° 17.815 del 14.09.2004 Violencia Sexual Comercial o No Comercial Cometida Contra Niños, Adolescentes o Incapaces) was issued, which, amongst other crimes, punishes commercial activities including the distribution of pornographic material in which the image, or any other way of representation, of a minor or an incapable person appears, but also the cooperation in the commercial exploitation and distribution of pornographic material in which the image, or any other way of representation, of one or more minors or incapable persons appears.

It is common for traditional crimes to be interpreted in such a way as to include new crimes. For instance, where a person hacks into an e-mail addresses, they have been convicted because they have violated personal communications.

Although several Bills have been presented to parliament and prepared by experts in cyber law matters, once proposed they are ignored and not considered. Hence there is a lack of legal regulation. Uruguay has yet to sign or ratify the Convention on Cybercrime CETS No.: 185, Budapest, 23/11/2001.

Three important cases in recent Uruguayan jurisprudence are set out below. Unfortunately, the case judgments are not available on the internet, because the cases below have kindly been provided by the Cyber Crimes Division of the headquarters of the Police of Montevideo, for which we thank them.

The Iván Germán Velázquez case

Iván Velázquez is an alleged Argentinean former spy and hacker who was wanted by Argentina, and found refuge in Uruguay in May 2008. In December of the same year, he was convicted in Uruguayan courts for taking part in a bribery crime, together with the crime of illegal use of privileged information (articles 154 and 163 of the Criminal Code) (Código Penal de la República Oriental del Uruguay Ley N° 9.155 del 4 de diciembre de 1933). On 25 January 2009, he was prosecuted in Uruguay, and sentenced to a term of imprisonment on charges of 'fraudulent knowledge of secret documents', for having

obtained secret data (identity and a type of armament) relating to 60 policemen in the Headquarters of Police of Montevideo.

The Argentinean justice system has applied to extradite him (the extradition order is pending at the time of writing), because he infiltrated more than 600 e-mails which belonged to politicians, including e-mails of the former president Nestor Kirchner, members of the Supreme Court, journalists and some celebrities. He also obtained private e-mails of politicians and diplomatic servants of Chile, Spain and Uruguay. The judgment was handed down by Judge Graciela Gatti, who has experience in cases of cyber crimes, but he was not prosecuted for the perpetration of an actual and regulated cyber crime, but of other crimes, because the existing law does not explicitly cover the acts he perpetrated.

The 'Chess operation' case

Uruguay belongs to the Latin American group of the Cyber Crimes Offices (Grupo Latinoamericano de Delitos Informáticos) that works together with Spain on operations of international cooperation against abusive images of children. In March of this year, the Cyber Crimes Division of the headquarters of Police of Montevideo prosecuted a man charged with the perpetration of the crime typified in article 2 of Law 17.815, relating to the storage and distribution purposes and distribution of abusive images of children.

The provisions of article 1° were applicable to the case, since it refers to the production of pornography:

Artículo 1°. (Fabricación o producción de material pornográfico con utilización de personas menores de edad o incapaces).- El que de cualquier forma fabricare o produjere material pornográfico utilizando a personas menores de edad o personas mayores de edad incapaces, o utilizare su imagen, será castigado con pena de veinticuatro meses de prisión a seis años de penitenciaría.

Article 1. (The manufacture or production of pornographic materials involving the use of minors or incapable people).- Any person that makes or produces pornographic material using minors or adults that are incapable, or uses their images, shall be punished with a penalty of twenty-four months imprisonment to six years' rigorous imprisonment.

In this case, the images and videos were obtained through the internationally well-known 'grooming' method, consisting of the technique of deceiving minors through Instant Messenger programs, to obtain images of erotic content of these minors in order to use them later to compel them to cooperate, under the threat of spreading such images over the internet.

The Maroñas Entertainment case

In April 2009 a person was prosecuted, for the first time in Uruguay, for the commission of libel through a series of publications on a web page. Criminal Judge Aída Barreto stated that according to the Criminal Code:

La injuria consiste en la ofensa al honor o a la rectitud de una persona a través de palabras, escritos u hechos. Los medios utilizados para causar dicha ofensa pueden ser o bien escritos, verbales o incluso mediante el uso de imágenes.

Libel consists in the offense to a person's honour or uprightness, by means of words, writings or facts. Means used to cause such offense, could be either written, oral, or by the use of images.

Until this case, Uruguayan jurisprudence has not considered the internet to be a form of printed media or a method of mass communication, which is the reason why Press Law N° 16.099 (Ley 16.099 de 3 de noviembre de 1989. Comunicaciones e informaciones) is not applicable to cases on the internet, which in turn would allow the defendants to obtain a more lenient punishment (fines for example) and the publication of a public exculpation, or both.

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