

# Prosecuting Internet / Computer Crime Cases

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## ◆ Global Survey - World Metrix March 2006

- 694 million people aged 15 used internet in one month, 14% of all adults
- 510 million people in Asia Pacific
- 253 million internet users in China as at July 2007
- United States by comparison has 220 million users (Int'l Herald Tribune, July 2008)

- ◆ One in five households worldwide have broadband by end of 2009
- ◆ Personal computer worldwide
  - 1 billion in 2008, 2 billion by 2015
  - New users from China, Russia, Brazil and India

# Problems Arising in Investigation & Prosecution

- ◆ Investigative stage
- ◆ Search and seizure of computer without warrant - human rights concerns
- ◆ Search of computers after arrest - no warrant
- ◆ Search warrants generally
- ◆ Legal professional privilege
- ◆ Ensuring the reliability of computer data for court use
- ◆ Expert evidence

## ◆ Investigative Stage

- Quick action
- Plan for investigation, who will be targeted
- Make decisions as early as possible
- Focus on problem elements – law contravened
- Keep investigation under review
- Collate sufficient evidence

# Challenges Faced by Investigators/Prosecutors

## ◆ Evidential Challenges

- Documentary evidence
  - ~ Identify, obtain and preserve the documents
- Witnesses
  - ~ Accountants and lawyers as witnesses - reluctance

## ◆ Search & Seizure

- Searching computers without warrants – Human Rights Concerns - ICCPR

~ “no one shall be subjected to or arbitrary or unlawful interference with his privacy family home or correspondence . . .”

## ◆ Search after arrest with no warrant

- “stop and search”
- United States v Reyes, compare UK approach in R v Chesterfield JJ exp Bramley

- ◆ **Legal Professional Privilege**
  - Article 35 of the Basic Law
  - European Convention for Protection of Human Rights and Fundamental Freedoms



- ◆ **Retrieving Computer Data**
- ◆ **Principles of Computer Forensic Examination**
  - Data Integrity
  - Free from Contamination
  - Full Documentation
  - Scientific Methodology

- ◆ Making Computer Evidence Admissible in Court
  - Affidavit / Certificate
  - UK – Computer Misuse Act

- ◆ Expert Evidence
  - Judges like professional witnesses
  - 3 common challenges –
    - ~ Lack authenticity
    - ~ Computer system not reliable
    - ~ Identity of the author

- ◆ **Ensuring the Reliability of Expert Evidence**

- **US case Daubert (1993) 509 US 57**

- ~ Judges to perform a “gate-keeping” role

- **Factors –**

- ~ Expert’s technique tested in objective sense

- ~ Technique subject to peer review

- ~ Potential rate of error

- ~ Existence and maintenance of standards and controls

- ~ Technique generally accepted in scientific community