Prosecuting Internet / Computer Crime Cases

R G Turnbull
Acting Deputy Director of Public Prosecutions
Department of Justice, HKSAR
People’s Republic of China
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