

OCTOPUS Interface Conference: Cooperation against Cybercrime
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Report on Argentina's Advances Concerning Cybercrime and the implementation of the Convention on Cybercrime.

I – Legislative Advances:

A year ago, I had the opportunity to address this forum when Argentina's Congress was about to pass a bill that would modify the National Criminal Code in order to cover several cybercrimes including, on the one hand, types of content-related offences such as child pornography and, on the other hand, extending legal protection to prevent the abuse of computers and information technologies through illegal behaviors such as damages, hacking, espionage, computer fraud and computer forgery. This reform solved constitutional issues arising from the legality principle expressed in Article 18 of the National Constitution, a principle that created some doubts concerning the possibility of giving the same juridical treatment to the opening of paper mail and electronic mail. In Argentina's law system there is no crime unless a strict, written and prior Act of Congress so states it, and the analogy *in malam partem* is expressly forbidden.

Thus, before the passing of the bill on cybercrimes, there were conflicting judgments in relation to the penalization of the unauthorized opening and publishing of electronic mails (some cases of electronic espionage and unauthorized publishing of emails from journalists, judges and politicians became well-publicized in 2006). This situation was finally settled when the bill on cybercrimes was passed by the unanimous vote of both chambers of Congress on June 4th, 2008, and became Act No. 26,388. The new law was enacted on June 24th the same year and is known as the Act on Cybercrimes (Ley de Delitos Informáticos). It includes all cybercrimes defined as such by the United Nations and the Budapest Convention of 2001, and follows the latter's guidelines on issues such as the protection of privacy, confidentiality and integrity of computer systems, networks and data. Legal protection of personal data, already established by Act of Congress 25,326, was extended to databases, files and registries of computer data.

Another big step forward was the inclusion of content-related offences like child pornography, even if Argentina's law differs from the dispositions of Article 9 of the

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Convention as far as the possession of pornographic material is concerned, since the new Act requires that commercialization purposes be proved unequivocally. Another difference is that sub-paragraphs b and c of paragraph 2 of Article 9 of the Budapest Convention have not been taken into consideration in the text of the Argentine law. Also under the new Act, and in accordance with Article 19 of the National Constitution, which safeguards a sphere of intimacy and reserve for all citizens as long as public morals are not offended or a third party affected, surfing through pornographic web pages is not punishable.

The new Act represents a decisive step in the fight against cybercrime in the region, even though the following issues are still pending:

a - The passing of procedural rules to facilitate the handling and storage of digital evidence. It should be noted that Act 26,388 reformed Article 77 of the National Criminal Code to put digital or any other medium documents on the same level as paper documents.

B - The passing of a new act on telecommunications or the reform of the national criminal procedural law code to include the storage and interception of traffic data, and eventually content data, with the necessary warrant and during a reasonable period to overcome the serious constitutional vices of Act 25,873, vices that have led Argentina's Supreme Court to declare the Act unconstitutional last February.

There is a shared awareness in Argentina among government agencies, the academic community and the private sector that regulative frameworks for legal procedure at the national level are needed. And there is also a need to adapt existing Argentine procedural law to the digital environment, but the difficulty of such a task is compounded by the country's federal system where the drafting and adoption and procedure law codes are the exclusive competences of provincial governments.

II. - Other activities carried out in relation to the enactment of Act of Congress 26,388 and the prospective signing of the Convention

We can mention a "One-Day Seminar on Computer Safety" organized by the Secretariat of Public Governance (Secretaría de la Gestión Pública), an office of the Presidential Chief of Staff that took place on July 22nd at Banco Nación's main offices. Lawyers and computer analysts, the private and the public sector and officials from the Ministry of Justice, the federal justice system, the Chief Public Prosecutor's office, the Spanish government and the Council of Europe were represented. The event's main purpose was to analyze and deepen the knowledge of recently passed Act 26,388, to study its relation and compliance with the Budapest Convention, the 'only legal institute that considers cybercrime as a global threat', as defined by an official of Argentina's Ministry of

Foreign Affairs, and a valuable tool to foster international cooperation and global responses.

Two months later, on October 20th and 21st, 2008, the National Senate organized a two-day seminar to discuss the new Act and related issues. Several businessmen, public officials from both the Executive and Judicial Branches, lawyers and computer analysts attended the event. Among the subjects that were discussed we can mention liability for Internet contents, the role of search engines and the viewpoints companies like Google and Microsoft have on these issues.

Finally, I am pleased to say that a multi-agency government and private sector commission on cybercrime created last year has issued a document analyzing the Budapest Convention which concludes that there are no major obstacles for Argentina to sign the Convention, as long as the reform of criminal procedural law in connection to information technologies, digital evidence and international cooperation and the implementation of 24/7 network can be accomplished. My office within Ministry of Justice and Human Rights is currently analyzing other statutes, like the Italian law of February 27th, 2008 to join the Budapest Convention and the Spanish law 25/07, in order to include in Argentina's legislation the storage of traffic and content data, their interception, cession and disclosure in both domestic and foreign cases linked to cybercrime.

The commission's document is currently being analyzed by the Ministry of Justice, Safety and Human Rights and the Ministry of Foreign Affairs and will serve as essential input for decision making in relation to acceding the Convention.

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