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## Protected systems and networks

By Pavan Duggal, TNN | 13 Apr, 2003, 01:57AM IST

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My query relates to Section 70 of the Information Technology Act 2000 which states that the government may declare any computer, computer system or computer network to be a "protected system".

Could you let me know under what circumstances a computer, etc, can be declared a "protected system"? Also, since the Act does not define "protected system", would you call that an omission? Would you say that Section 70 is arbitrary, giving wide powers to the government and therefore violates Art. 14 of the Constitution of India?

Sanjeev Govindan

The issue raised by you is indeed very pertinent. Section 70 of the Information Technology Act is the only provision in the Indian cyberlaw, which deals with the issue of protected system. The definitional clause under Section 2 of the IT Act 2000 does not define a "protected system".

Under Section 70, the appropriate government — whether Central or state — has the discretion to declare any computer, computer system or computer network as a protected system.

But section 70 does not define a protected system or any parameters or standards which will enable the appropriate government to declare a computer system or a network to be a protected system.

However, in my opinion any computer, computer system or computer network, containing extremely crucial and critical information from the government's perspective can indeed be declared a protected system.

Further any computer, computer system or computer network, which is key to an integral part of crucial sovereign functions of a state, be it defence, maintenance of public order, decency or friendly relations with other nations, can also be designated as a protected system.

A government can also declare a computer, computer system or network as a protected system if it feels, at any point of time, that it is critical for public interest and that any compromise with regard to its security could impact people, groups or even the society.

I think that over a period of time, the government will have to draw up appropriate rules and regulations elaborating distinct parameters on the basis of which a protected system can be declared.

This would come within the residual powers granted to the Central government under the provisions of the IT Act wherein it has been provided that the Central government may by notification in the official gazette and in the electronic gazette make rules to carry out the provisions of the Act, including any matter which is required to be prescribed.

I distinctly agree with your suggestion that the IT Act 2000 has committed a glaring omission by not defining the words "protected system". Had it defined the word "protected system" in its definitional clause under Section 2 or by way of explanation under Section 70, life would have been far simpler so that there would have been lesser chances of a debate on the issue.

Regarding your last query, I feel that Section 70 is not at all arbitrary. It is true that



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Section 70 does give wide powers to the government but to say that it violates Article 14 of the Constitution of India is an argument, which may not, in all likelihood, gain acceptability in a court of law.

This is so because though the Fundamental Rights granted under Constitution of India are sacrosanct, it does not mean that there cannot be restrictions on them. It is true that under Article 14 of the Constitution of India, it has been stipulated that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This does not mean that a person has right to absolute equality. The law has introduced the concept of equality among equals.

In the totality of the discussions detailed above, I feel that Section 70 of the IT Act is not arbitrary and can be seen to be a reasonable restriction which can be imposed upon the right of equality under Article 14 of the Constitution of India. Of course, it would be interesting to see what would be the outcome of such an issue, should it reach a court of law.

It is important to note that at the time of writing, the provisions of the IT Act has not been tested in judicial waters. It will be interesting to see the developments in this regard.

IS THE use of video conferencing for recording evidence legally permitted in India?  
BS

Video conferencing represents one of the latest advancements of technologies which have been put into service for public good and dispensation of justice. Till now video conferencing has always been in a grey area in terms of its legality. However, in a recent landmark judgement, the Supreme Court has given a verdict which promises to change the course of criminal trial and procedure in India.

In this case by its order, the Supreme Court permitted the use of technology in the courtroom.

In a matter of medical negligence, the Supreme Court held that video conferencing has nothing to do with virtual reality. The court observed that advances in science & technology has shrunk the world so as to enable a person to see and hear events which are taking place far away.

The Supreme Court in order to substantiate its viewpoint cited the example of the live telecast of World Cup Cricket matches. The court held that both the person sitting inside the stadium and the person in the drawing room can watch what's happening at the same time.

This is not virtual reality as one is actually seeing what's happening. The court has described video conferencing as an advancement in technology that permits a person to see, hear and talk to someone far away.

The court has clearly taken the view that as long as an accused or his pleader is present when the evidence is being recorded by video conferencing, that evidence is being recorded in the "presence" of the accused. This judgement is of immense significance. Seen from another angle, video conferencing is nothing but the exchange of data in electronic form and covered under the Information Technology Act 2000. In a country, where dispensation of justice is relatively very slow, video conferencing promises to expedite the process.

IS THE law effective in tackling the menace of the new kinds of email worms that are spreading all across the world?

Ritesh

Your question raises an important concern for email and internet users. It is true that in some jurisdictions, the law does make an effort to address issues such as the proliferation and distribution of email worms.

However, many jurisdictions do not address it. It is important to note here that technology is always ahead of the law and the laws against dissemination of email worms are not very effective the world over.

Existing statistics makes it clear that far from deterring worms, there are more and more of them spreading globally.

A survey conducted by ISS's X-Force Threat Analysis Services Division between January 1 and March 31, 2003 found that computer security incidents and attacks detected at businesses worldwide soared by 84 per cent between the fourth quarter of 2002 and the first quarter this year. There was a surge in the number of mass-mailing worms in that

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- No
- Can't say

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period.

The number of worms and hybrid threats between January 1 and March 31 totalled 752, compared with 101 in the fourth quarter of 2002, the report found.

It gave a detailed analysis of the businesses attacked and found that retail businesses were attacked the most, accounting for 35 per cent of attacks; financial services accounted for 11.5 per cent, healthcare and manufacturing 9 per cent each, and federal and local government 1 per cent. It further found that 26 per cent of security breaches occurred over weekends in the first quarter of 2003, most of them on a Friday. The Slammer worm began its propagation on Saturday, January 25.

This study indicates that the law will have to be substantially changed to prevent the spread of worms and other security breaches across the world.

However, these are still early days and it will be interesting to see the reaction of governments and law makers on these issues. We all know that drafting law and implementing it is a time-consuming process.

But one does hope that given the severity of the problem, legislatures and governments across the world will take up the challenge and enact laws that are effective against email worms and other security breaches.

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