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SPOTLIGHT

Odd-even



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Spamming isn't a legal offence in India

By Pavan Duggal, ET CONTRIBUTORS | 24 Feb, 2002, 12.21AM IST

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WHAT IS SMS spamming? Is it illegal in India? Ashok Malhotra, Delhi SMS spamming refers to the process of sending unsolicited SMS messages. Users of mobile phones are beginning to see a glut of unwanted and unsolicited SMS messages, flooding their cell phones. The law in India has not yet touched SMS spamming. In fact, spamming per se is not an offence in India. However, some countries are beginning to address the issue of SMS spamming. In a recent legislative move, Hong Kong declared SMS spamming to be illegal. In December 2001, Hong Kong's six mobile network operators funded, developed and implemented a system that enables inter-carrier SMS. As per this service, mobile users can send text messages to each other across the rival networks. However, this facility has become a cause of concern about SMS spam among the users. The new code provides that promotional short messages can be sent only with the prior approval of the subscribers. If spamming is reported, the operator may block the short message service of the sender, if the circumstances so desire. In the coming times, I feel that SMS spam is going to emerge, as a big headache for users and governments would have to legally regulate the same. **IS THE US taking any steps to train their population about the dangers of cyber crime, especially after the September 11 attack?** Rajneev Singh, Bangalore America has been really shaken up by the September 11 attacks. Life isn't the same anymore, with increased surveillance and regulation all around. The Bush Administration has passed the USA Patriot Act and has further enabled the use of the deadly carnivore programme for a period of up to 48 hours without any prior authorization from a US Court. In addition, the first guidelines for fighting cyber crime in the scenario that emerged post September 11 attacks have recently been published. These guidelines have been drafted by the US government and private security experts, and have yet to be endorsed by the FBI and the secret service. These guidelines provide complete contact information for businesses to report intrusions to public authorities and various information sharing partnerships that the FBI has created. The guidelines advise against reporting minor intrusions like the efforts of outsiders to scan corporate systems for ways to penetrate them. As per one estimate, cyber crime cost billions of dollars annually. According to the annual survey made by the computer security institute and the San Francisco office of the Federal Bureau of Investigation, only 36% of those who experienced intrusions reported them to the authorities in the year 2001. The important part of the guidelines is that it seeks an emphasis on planning ahead in order to ensure that people and companies are prepared for cyber attacks and take appropriate precautions in this regard. It is pertinent to note that these guidelines have come in at a time when the number of both government and private organizations trying to fight and track down cyber crimes has been expanding after the September 11 tragedy. However, September 11 has also given rise to another trend among companies. Many companies continue to be reluctant and hesitant in providing enough information to law enforcement agencies fighting cyber crimes. This seems to be due to a fear that they will lose business if their security breaches become public or are likely to become a target of revenge attacks. **Should Value Added Tax (VAT) be applied to sales on the Internet?**

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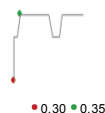


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A bank is known by the network it keeps, literally!

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Dhirendra, Ahmedabad Taxation of e-commerce has become one of the most contentious legal issues that have existed for quite some time. Every government logically wants to tax every new valuable source of revenue. Since electronic-commerce promises to be one of the most lucrative sources of revenue generation, governments the world over can't wait but to start taxing the e-commerce regime. Of course, there are diverse opinions in this regard. One school of thought states that the internet should indeed be taxed but not right now, since it isn't fully developed and taxation could hamper its growth. Another school advocates taxation in the present scenario. I am personally of the opinion that we shouldn't be in a hurry. Seen in a historical perspective, the internet is a young phenomenon and electronic commerce has yet to effectively develop its full potential. Meanwhile, an interesting development in this regard has been reported. The European Union's Council of Economics and Finance Ministers have recently signed a proposal to apply the European Union's Value Added Tax (VAT) programme on sale of digital products via the internet. This has been done despite disapproving noises in the United States. The effect of this would be that EU's VAT programme would apply to all products sold on the internet as well as products that are really consumed online, such as e-books, digital books or digital music. It is further expected that VAT is also likely to apply to goods and services that EU citizens and companies buy from businesses operating in other countries. It has been reported that this move has taken place on the request of EU based businesses. It has become a subject of immense debate due to differential rates of taxation in different jurisdictions. Another issue concerning the same is how to enforce the VAT regime on online sales, given the inherent nature of the internet. There has been another school of thought, which advocates that there should be an e-commerce sales tax moratorium until a global taxation standard is adopted. The debate continues. It would be interesting to see how the law develops in this direction. **What is the status of email chain letters? Are they illegal?** Sudha Chadda, Kanpur Anyone using the nternet and email would surely have received internet chain letters. These email chain letters often promise an say \$50,000 in the next 90 days. Email chain letters are part of a larger email scam, involving illegal pyramid schemes, work at home jobs such as envelope stuffing and craft assembly, or bogus weight loss products that promise to melt away fat cells. These kinds of chain letters are illegal. Recently, the Federal Trade Commission of the US took a stand to the effect that such email chain letters are illegal. These are all part of a deceptive scam, which is illegal. In fact, the FTC is pressing charges against some e-offenders who sent out mass mailings. Thus, anyone using email for deception may have to face the consequences. **WHAT RECOURSE do I have, under law, if my site/computer is hacked by a person, residing outside India?** ABC, Delhi If your computer is hacked by a person residing outside India, you do have a remedy. You can go to the Deputy Superintendent of Police of your area or a cyber crime cell, if your area has one, and register the case under Section 66 of the IT Act. Hacking is an offence made punishable with imprisonment of up to three years and fine of up to Rs 2 lakh. By virtue of specific provisions the IT Act 2000 applies not only to India, but also to any contravention or violation of the IT Act committed by anyone anywhere in the world, so long as the affected computer, system or network is in India. Thus, Indian law enforcement agencies have been granted extra-territorial jurisdiction and you can get your case registered under Section 66 of the IT Act. However, practically speaking, this isn't really an effective remedy since it will not make any material difference. A hacker operating abroad can be brought to India for trial if India has an extradition treaty with the country where the hacker is residing. Getting a person extradited is very complicated process and is likely to take a lot of time. This remedy isn't at all effective. If India signs the International Cyber Crime Treaty, tackling hackers in countries which are signatories of the Treaty would be far more easier. **What endeavours have been made till date to tackle multiplicity of jurisdiction in relation to cyber crimes? What efforts has the Hague Conference on Private International Law taken in this regard?** Sanchi Agarwal, Jaipur Multiplicity of jurisdiction is a big problem as far as tackling cyber crime is concerned. Besides, it is very difficult to determine where the cyber crime was committed. Since internet can be accessed anywhere, the difficulty arises in determining the court that has jurisdiction over it. The law on jurisdiction in cyberlaw is still evolving and there has been no finality attached to it as yet. The Hague Convention on Private International



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Law is expected to provide some relief in this direction, but things are still at the stage of deliberations. The Hague Convention Of Private International Law seeks to apply to civil and commercial matters and shall not extend in particular to revenue, customs and other administration matters. It also gives the impression that it is not likely to apply specifically to cyber crime matters since it applies to civil and commercial matters only. However, once the convention comes into existence it is likely to settle some important principles relating to jurisdiction in civil and commercial matters. These principles may act as guiding principles for determination of jurisdiction and for reconciling the contentious issue of multiplicity of jurisdiction in the context of cyber crimes.

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