DIGITAL WORLD HUB FOR CYBER CRIME: A REVIEW

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ABSTRACT

Cybercrime refers to any crime committed that involves internet and any intelligent devices or any illegal (Unlawful) activity performed on internet. The recent spate of criminal activities on internet once again unleashed the debate over "*emerging trends of cybercrime.*" Internet has entered in all the spheres of human life since the digital world came into existence. The fields like trade, education, corporate sectors, transportation, and communication are highly influenced by internet. This research paper discusses the changing nature of cybercrime prevalent in 21st century in India and reason behind the growth of this social menace. This research paper shall also recommends the adoption of strategies to curb this social menace from the proposed convention at international level and the steps taken by various countries, find out how effective these laws are to protect the internet users from the cybercriminal activities.

Keywords:Social menace,Cyber criminal activities

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Published By: Universal Multidisciplinary Research Institute Pvt Ltd

INTRODUCTION

Cyber-crime is vigorously growing in our country. The increase in broadband access has resulted in an increase in internet users. Thus, India has become a 'safe haven' for cyber criminals. Broadband access or connectivity of internet created the virtual world known as "*cyberspace*". Cyber space is very wide representation, including cyber-crime, computer, net banking, web engineering, storage media, networking tools. In a current era cyber experts or hackers are very smart and use the latest technology for hacking they know all the cyber laws and find out the loopholes within that law and perform the illegal activities in cyberspace and it's referred as cyber-crime. There is no one exhaustive definition of the term "Cyber law", however, simply put, Cyber law is a term which refers to all the legal and regulatory aspects of Internet and the World Wide Web[3]. Anything concerned with or related to[4], or emanating from any legal aspects or issues concerning any activity of natives and others, in Cyberspace comes within the ambit of Cyber law[5]. Internet is a communicative medium, once connected, there is little that a single country can do to prevent citizens from communicating with the rest of the world. So cybercrime has become a global problem as internet users of one country can perform criminal activity in another country as it has undefined boundary, and requires a global intervention to control cyber-criminal activity on internet.

This manuscript in the second part looks at the changing nature of cyber-crime and briefly discusses prevalent acts amongst cyber criminals. The scope of this essay is thus limited to the new crimes such as cyber-squatting and cyber bullying introduced due to technology

[3]Ravi Kumar S. Patel and Dr.Dhaval Kathiriya, Evolution of Cybercrimes in India, Volume 2, Issue 4, July – August 2013, ISSN 2278-6856,www.ijettcs.org (last accessed on, July 22nd, 2014)
[4]Id.
[5] Id.

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advancement and determining the reason behind its growth. The manuscript concludes with recommendations and steps by various countries to curb cyber-crime.

2 CHANGING NATURE OF CYBER CRIME

The traditionally performed crimes, in the digital world allowed Global access to networking system and lack of communication barrier helped cyber-criminals to perform their activities. First wave of computer technology in 1940's, lead to a misuse and abuse of computer. Firstly it entered in military system, then spread to scientific arena and finally to business and private applications.[6]It seems that computer crimes will be worsening with the ever changing technology and it has become impossible to prevent. Day by day internet users are increasing and contributing to the large and steady growth of cyber-crime, and using modern technologies to their full extent [7] Cybercrime's place is growing due to the exponential development of connections, increased subject knowledge, cultural awareness, and programmable on-board electronics, due to which potential targets have been increased[8]. Cyber-crime generally requires a smaller investment, when it compares to other crimes and offences and can be carried out in various locations, without any geographical constraints, with no consideration to borders.[9]The flourishing synergy arising between recent crimes and the Internet has increased the insecurity of the digital world. The activities of cyber world are functions of the stocks of hacking skills relative to the availability of economic opportunities.[10] The various kinds of cyber-crimes are:

[6] Sara L. Marler, The Convention on Cyber-Crime: Should the United States Ratify, 37 New Eng. L. Rev. 183,2002, at p-3<http://www.nesl.edu/userfiles/file/lawreview/vol37/1/marler.pdf> (last accessed on August 19,2014)
[7] Id. At p-4
[8]"Prospective Analysis on Trends in Cybercrime from 2011 to 2020", © 2011 National Gendarmerie. http://www.mcafee.com/nl/resources/white-papers/wp-trends-in-cybercrime-2011-2020.pdf(last accessed august 19, 20140
[9]Id.
[10] Nir Kshetri, Pattern of global cyber war and crime: A conceptual framework, journal of International Management, Volume 11 available at http://www.sciencedirect.com/science/article/pii/S1075425305000700.(last accessed August 19, 2014)

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1. **Hacking** –Hacker is an unauthorized user attempting to gain access to information system. It is a crime as it is invasion to privacy of data. Hackers are of 3 types- white, black and grey hat hackers. [11]
2. **Cyber stalking**- It refers to stalk a person online, meaning use of technology, particularly the digital world, to harass someone.[12]
3. **Spamming**- It means flooding the e-mail with many copies of the same message, in order to force people to receive the mail which otherwise they would not choose to receive it.[13] It can also be said as "unsolicited advertisements for products or services".[14]
4. **Child pornography**- child pornography is online trading of images of the children involved in sexual activities.[15]
5. **Phishing**- It is essentially an online game, and phishers are use spam, fake Web sites, and various techniques to trick people into divulging sensitive information.[16]
6. **Software piracy**- An illegal way of reproduction and distribution of software for business /personal use. It is a kind of infringement of copy right, violation of a license agreement.[17]

The cybercrimes are changing dynamically, with emerging new trends which have become common among cyber criminals, along with the cyber-crime discussed above author mainly dealing with cyber-squatting and cyber bullying.

2.1 CYBER SQUATTING:

[11] Dr. A.Prasanna, cyber-crimes: law and practice http://www.img.kerala.gov.in/docs/downloads/cyber%20crimes.pdf , (last accessed on August, 19th , 2014)
[12] Marian Merritt, Straight Talk about Cyber stalking, http://in.norton.com/cyberstalking/article. (last accessed on, August,19,2014)
[13] Scott Hazen Mueller, Promote responsible net commerce: fight spam, http://spam.abuse.net/overview/whatisspam.shtml (last accessed on 18th august, 2014).
[14] The email spamming, a cybercrime? A time massacre, Word press themes, criminal lawyer group http://www.criminallawyergroup.com/criminal-law/the-email-spamming-a-cybercrime-a-time-massacre.php. (Lastaccessed on August 18th, 2014)
[15] Id.
[16] Norton by Symantec, Online fraud:phishing available at http://in.norton.com/cybercrime-phishing (last accessed on August 20th ,2014)
[17] Dr. A.Prasanna, cyber-crimes: law and practice, volumeII, page No.3, http://www.img.kerala.gov.in/docs/downloads/cyber%20crimes.pdf, (last accessed on August, 19th, 2014)

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The advent of the Internet, the world today is witnessing a revolutionary change in the field of communications. Cyber squat falls under the ambit of cybercrimes. It can be defined as,

"When a person other than the owner of a well-known trademark registers that trademark as an Internet domain name and then attempts to profit from it either by ransoming the domain name back to the trademark owner or by using the domain name to divert business from the trademark owner to the owner of the domain name".[18]

The essential elements for cybersquatting claim are:[19]

1. Plaintiff's ownership of a distinctive or famous mark entitled to protection.[20]
2. Defendant's domain name is identical or confusingly similar to plaintiff's trademark.[21]
3. Defendant registered domain name with bad faith intent to profit from it.[22]

Courts in various cases have highlighted the, possible abuse and commercial nuisance generated in cyber-squatting which include: -

In *Yahoo! Inc. v. AKASH ARORA*[23]first Indian case for cybersquatting.

Court held, wherein the plaintiff is registered owner of the domain name<yahoo.com>obtained interim order successfully to restrain the defendants and agents from dealing in service or goods on the Internet or otherwise under the domain name <yahooindia.com> or any other trademark/ domain name which is deceptively similar to the plaintiff's trademark <yahoo.com>[24].

In, other case Titan *Industries* v *Prashant Koorapti & others*[25] the defendant registered the domain name "tanishq.com" The Plaintiff Company, which has been using the trade mark

[18]*Daimler Chrysler v.The Net Inc., 388 F.3d 201 (6th Cir. 2004).*
[19] Cybersquatting in India, Legal information institute, oct16, 2009, http://www.law.cornell.edu/wex/cybersquatting (last accessed on August 20th ,2014)
[20]*Nike, Inc. v. Circle Group Internet, Inc., 318 F.Supp.2d 688 (N.D. Ill. 2004*), 15 U.S.C. § 1125(d); http://www.law.cornell.edu/wex/cybersquatting (last accessed on August,21, 2014)
[21]*Playboy Enters., Inc. v. Frena, 839 F. Supp. 1552 (M.D. Fla. 1993)*
[22]*Ford Motor Co. v. Great Domains.com Inc., 177 F. Supp. 2d 656 (E.D. Mich. 2001)*
[23] Cybersquatting in India, Legal Process Outsourcing Services MARCH 16,2011,http://legalonline.blogspot.in/2011/03/cybersquatting-in-india.html, (Last accessed on 19th August,2014)
[24] Id.
[25] Sunando Mukherjee Passing Off in Internet Domain Names—A Legal Analysis, Journal of Intellectual Property Rights Vol. 9, March 2004, pp. 136-147,

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"tanishq" with respect to watches manufactured by it,[26] sued for passing off and held that the,[27] domain name used by the defendants would lead to confusion and deception and damages the goodwill and reputation of the plaintiffs.[28] Court has granted an ex-parte ad-interim injunction restraining the defendants for using the name "TANISHQ" on the Internet or otherwise and from committing any other act as is likely to lead to passing off of the business and goods of the defendants as the business and goods of the plaintiff.[29]

Under this, if a dispute arises due to an abusive registration of domain names, the trademark holder must initiate an Administrative proceeding by filing a complaint with an approved dispute-resolution service provider in accordance with the Uniform Domain-Name. The policy has been adopted on a recommendation to the Internet Corporation of Assigned Names and Numbers (ICANN) by WIPO.[30] ICANN accredited the two types of providers one is gTLDs and who has voluntarily adopted UDRP, accredited as ccTLDs.[31] This mechanism helped in controlling the problem of cybersquatting around the globe.

2.2 CYBER BULLYING:

Technology provides numerous benefits to young people, it has a 'dark side', as it can be misused, not only by some adults but also by young people themselves,[32]one of that form is Cyber bullying which involves use of information and communication technologies such as emails, cell phone and instant messages, defamatory personal website or defamatory online personal polling website, to support deliberated, repeated and hostile behavior by an individual or group that is intended to harm one another.[33] Nowadays kids are mostly connected to the wires and communication, which is unknown to the supervision of their parents and numerous

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http://www.niscair.res.in/sciencecommunication/researchjournals/rejour/jipr/Fulltextsearch/2004/March%202004/JIPR-vol%209-March%202004-pp%20136-147.htm , accessed last on 21th august,2014

[26] Id.

[27] Id.

[28] *Id.*

[29] Id.

[30] Domain Dispute Resolution Policy, Soft Layer Technologies, Inc.http://cdn.softlayer.com/SoftLayer_Domain_Dispute_Resolution.pdf.(Last accessed on 19th August,2014)

[31] Supra note 20 at p-1

[32] Marilyn A. Campbell (2005). Cyber Bullying: An Old Problem in a New Guise. Australian Journal of Guidance and Counselling, 15, pp 68-76. <Doi: 10.1375/ajgc.15.1.68.>

[33] Susan Keith and Michelle Martin, Cyber Bullying: creating culture of respect in a world, reclaiming children and youth ,2005 pp-224-228 http://hermes.webster.edu/browntim/Cyberbullying%20Project/cyber-bullying_creating_a_culture_of_respect_in_a_cyber_world.pdf , (Last accessed on 20th August,2014)

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surveys have estimated that 91% kids 12-15 years old and almost all teenagers 16-18 years old using internet.[34]

In the past several years, parents have provided cell phones to their children to keep them safe when they are alone, but it proved to be harassment for their children by misusing it, such as send text message, pictures and live videos.[35]This is how it has a great impact on creating a negative forum and an emerging trend in the Cyber world

Effects of cyber bullying:

Suicide has been seen as the most prevalent effect due to cyber bullying, there are several cases which has been registered for suicide and reason behind every case is cyber bullying. In case of *United States v. Drew*[36]Megan Meier, committed suicide due to harassment and bullying on net. Harassment by communication includes (but is not limited to) the following actions:[37]

1. Engaging in a course of conduct or repeatedly committing acts which serve no legitimate purpose[38]
2. Communicating to or about another person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures.[39]

Apart from suicide, children who are feel unsafe at home and tend to talk back in a harsh manner as they will be unable to see the other party.[40]

Legislative response on Cyber bulling:

In the wake of high-profile suicides like that of Megan Meier, several states and U.S.A government too have enacted or proposed cyber bullying legislation[41]. Many of the laws were

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[34] Heidi Vandebosch and Katrien Van Cleemput. Cyber Psychology & Behaviour. August 2008, < 11(4): 499-503. Doi: 10.1089/cpb.2007.0042.>

[35] Supra note-30

[36]*259 F.R.D. 449 (C.D. Cal. 2009).*

[37] Judge Jessica Brew bake, Cyberbullying isn't a crime but it can be punished: The Judicial Notice, October 29, 2013, http://www.pennlive.com/living/index.ssf/2013/10/bullying_the_judicial_notice.html (last accessed on August,21, 2014)

[38]Id.

[39]U.S § 2709(a)(4), crimes and offenses Act, http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.027.009.000..HTM, (last Accessed on , August 21st ,2014)

[40] Kathy Kara George, Rosemary Kendall, The Role of Professional Child Care Providers in Preventing and Responding to Child Abuse and Neglect, U.S. Department of Health and Human Services Administration for Children and Families.https://www.childwelfare.gov/pubs/usermanuals/childcare/childcare.pdf (last accessed on 21th, August, 2014)

[41]Alison Virginia King, Constitutionality of Cyber bullying Laws: Keeping the Online Playground Safe for Both Teens and Free Speech, 63 Vand. L. Rev. 845,April, 2010 at p-858, http://www.vanderbiltlawreview.org/articles/2010/05/King-Constitutionality-of-Cyberbullying-Laws-63-Vand.-L.-Rev.-845-2010.pdf (last accessed on August,21st,2014)

prompted by a specific, high-profile instance of cyber bullying, while others represent a proactive effort to prevent such extreme cases from happening.[42] Most of the laws focus on prohibiting online harassment and bullying within the public-school.[43]

As of today, twenty states have enacted laws to combat Cyber bullying.[44]These laws prohibit cyber bullying in two ways:[45]

1. First, some specifically proscribe cyber bullying as a prohibited act within the operative provision of the law.[46]
2. Second, others target the broader act of bullying and include cyber bullying within the statutory definition of the terms "bullying," "intimidation," or "harassment.[47]

The laws enacted by the states have chosen to address the problem by enacting cyber stalking statutes.[48] Cyber stalking statutes bar the use of the Internet and electronic-communication tools to repeatedly harass or threaten an individual and many states that have proposed legislation to curb this crime and some of the proposed laws also entail severe penalties for cyber bullying—much more severe than the school sanctions imposed by current cyber bullying laws. This may help in to control the negative effect of it.[49]

3 RECOMMENDATIONS AND CONCLUSION

In the light of the above arguments it recommends the appropriate measures in order to curb cyber-crime followed around the world which can be implemented in India and other developing countries.

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[42] Megan Meier Cyberbullying Prevention Act, H.R. 6123, 110th Cong. (2008) (naming the bill after Megan Meier), and FLA. STAT. § 1006.147 (2008) (naming the state's ant bullying law the "Jeffrey Johnston Stand Up for All Students Act" after a teenager who committed suicide after being harassed over the Internet). http://nobullying.com/six-unforgettable-cyber-bullying-cases

[43]Supra note-38. At p-4

[44] The twenty states available at http://www.legislature.mi.gov/(S(py2lnp55ctwm31bnyeuu5krj))/documents/publications/executiveorders/2007-EO-46.htm (last accessed on 19th August, 2014.)

[45] Alison Virginia King, Constitutionality of Cyber bullying Laws: Keeping the Online Playground Safe for Both Teens and Free Speech, 63 Vand. L. Rev. 845,April, 2010 at p-858, http://www.vanderbiltlawreview.org/articles/2010/05/King-Constitutionality-of-Cyberbullying-Laws-63-Vand.-L.-Rev.-845-2010.pdf

[46]Id.

[47]Id.

[48]Supra note-31

[49]Supra-note42

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The Convention on Cyber-crime [hereinafter, the Convention] is the first international treaty to battle a relatively new area of crime that is feverishly spreading around the globe.[50]

The Convention includes forty-three European member states in addition to Japan, Canada, South Africa, and the United States.[51]The European Union in 2001 adopted convention on cyber-crime in order to combat crimes in cyber world. In the Convention, parties are required to take legislative and other measures, in their substantive criminal laws, necessary to establish criminal liability for offences like Illegal Access, Misuse of Devices, fraud and forgery related to computer, and Offences Related to Child Pornography, Infringements of Copyright and Related Rights and Attempt and Aiding or Abetting of offences.[52]Parties to it can adopt necessary measures for establishment of certain powers and procedures for specific criminal investigation and proceedings to protect and safeguard human rights and liberties.[53]

The chapter III of the convention tells that for the convenience in dealing with cyber-crimes it provides certain principles- co-operation (extradition), mutual assistance, and limiting use of shared data. The Convention also requires states to designate a point of contact available on a twenty-four hour, seven-day-a-week basis to ensure assistance in investigations and collection of evidence.[54]

There are various steps adopted by other countries to curb cyber-crime are:

In Malaysia, the Computer Crime Act, 1997 is a progressive legislation which defines the offence of hacking. He will be held guilty on the grounds – with intent to secure access to any program or data held in computer, if access is unauthorized. The intent need not be for a particular program or data for particular computer.[55]

[50]Supra note 4.
[51] Convention on Cybercrime, at http://www.coe.int (last visited august. 17, 2014).
[52]Id.
[53]Supra note 4 at p-6.
[54]Id.
[55] Justice Rajesh Tandon, International Conference of Jurists on Sea: Global Warming & Rule of Law organized by International Council of Jurists at Lido Auditorium of Super Star Virgo Cruise, Singapore28th February,2010, at p-25-27 http://catindia.gov.in/writereaddata/ln_F5C0iN111912012.pdf (last accessed on august 18, 2014)

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In USA in the year 1986, The Computer Fraud and Abuse Act was passed in order to combat cybercrimes which was amended in 2001 by USA PATRIOT Act which aimed at increasing the scope and penalties and making it more comprehensive.[56]

Therefore there is a need for addressing this issue in a complete manner. To achieve this it should be brought in a legislation that exclusively addresses substantive law relating to cyber-crimes. This could also be achieved by integrating the real world crimes and virtual world crimes in an integrated code by carrying out necessary changes in the legislations of the countries and co-operation at international level to curb prevailing crime in virtual world.

[56] Michael Kunz & Patrick Wilson, Computer Crime and Computer Fraud, University of Maryland Department of Criminology and Criminal Justice Fall, 2004 http://webkuliah.unimedia.ac.id/ebook/files/computer_crime_study.pdf (last accessed on, August 18,2014)

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- *Nike, Inc. v. Circle Group Internet, Inc., 318 F.Supp.2d 688 (N.D. Ill. 2004)*
- *Industries v Prashant Komati& others.*

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