Cyber Hacking- "Welcome to the 21st Century"

"Know your enemy and know yourself and you will always be victorious..."

Introduction

The internet is ever growing and we are truly pebbles in a vast ocean of information. They say what you don't know can't hurt you but when it comes to the Internet believe quite the opposite. On the Internet there are millions and millions of computer users logging on and off on a daily basis. Information is transferred from one point to another in a heartbeat. Amongst those millions we are one. With the dawning of modern era, the use of computers and its knowledge has now become a necessity rather than a privilege. The technological advancements have completely taken over the world in a very short span. Today, computers play a major role in almost every crime that is committed. Every crime that is committed is not necessarily a computer crime, but it does mean that law enforcement must become much more computer literate just to be able to keep up with the criminal element. Hacking is one of such crimes that have affected the world at large.

What is Hacking?

The word 'hacking' has been much used and abused in the information technology lexicon. In its original technological sense, the word 'hacker' was coined at MIT in the late 1960s and hackers were computer wizards and geniuses who claimed the hacker title. "To hack" was to figure out something that a normal programmer could not think and understand. As per the New Hacker's Dictionary, Hacker means, "A person who enjoys exploring the details of programmable systems and how to stretch their capabilities; one who programs enthusiastically, even obsessively."However the meaning of this term has changed in recent times. Today, hacking is associated with individuals who maliciously invade computer systems without authorization.

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Hackers and Crackers

I feel it is necessary to clarify the term Hacker. Since the definition of a hacker has been influenced and tainted over the years. There have been various computer related activities attributed to the term "hacker", but are greatly misunderstood. 'Hackers' are very intelligent people who use their skill in a constructive and positive manner. They help the government to protect national documents of strategic importance, help organizations to protect documents and company secrets, and even sometimes help justice to meet its end by extracting out electronic evidence. Rather, these are people who help to keep computer criminals on the run. There are various types of "hackers", each with their own agenda. A hacker by definition believes in access to free information. They are usually very intelligent people who could care very little about what you as an individual have on your system. Their thrill comes from system infiltration for information reasons. Hackers unlike "crackers and anarchist" know being able to break system security doesn't make one a hacker any more than adding 2+2 makes one a mathematician. Unfortunately, due to the bad media, journalists and writers have been fooled into using the word 'Hacker' for any sort of computer related illegal activities. Real hackers target mainly government institution. They believe important information can be found within government institutions. The higher the security the better the challenge. These individuals come in a variety of age classes. They range from High School students to University Graduates. While Crackers are generally some people who break into someone else's computer system, often on a network, bypasses passwords or licenses in computer programs or in other ways intentionally breaches computer security. Crackers do this for profit, maliciously, for some altruistic purpose or cause, or because there's a challenge present here.

So, the former identifies itself with 'Ethical Hacking' and the latter with Unethical Hacking. I believe to clear out any discrepancies its best to lay down an example; Ankit Fadia for one is the best example, he has crisscrossed India, giving lectures to police departments, software companies, educational institutions and government agencies on how to fight "cyber criminals" and deal with computer viruses. Fadia, developed his computer skills after spending long hours

on the Internet, breaking into Web sites as an "ethical hacker" and then informing companies about their sites' vulnerability.

Jurisdiction V/s Hacking

In the Indian stature, with regard to jurisdiction over hacking, laws are almost non-existent. Firstly because there has been very few cases regarding hacking, in India and then Secondly, it is an emerging field and that too where the place of action for the dispute is very difficult to decide, which is also an interesting feature of the IT Act, As per Sec.1 (2) the act clearly states and laid down, the act will applicable to offences and contraventions committed by any person not just in India but also outside India and by virtue of Sec.75 which lays down that the Indian Courts will have jurisdiction over acts committed outside India as well as over foreigners committing such acts, if the act amounts to an offence or contravention involving a computer, computer system or computer network located in India. So, the determining factor is the location of computer, computer system or computer network that is involved in an act or transaction.

In India under Civil Procedure Code, the court would assume jurisdiction over a defendant, if even a part of the cause of action for the dispute arose within its jurisdiction. Now these may appear to be distinct and disparate points of view but when you get down to examining the essential ingredients that must be fulfilled in order to satisfy the requirements of these principles, there are several similarities between them which may allow the Indian Courts to assume jurisdiction.

Is Hacking an Offence under the Indian Law?

After the Recent Amendments in the IT Act of 2000, the scope has been widened. Under the Indian Law by virtue of Sections 43 and Sections 66 of the act, which talks about Penalties and Compensation for damage to computer, computer system, etc and Computer related offences respectively. So, it can be easily identifiable that yes hacking is an offence in India under the

terms of IT Act, and Section 66 clearly lays down, "If any person, dishonestly or fraudulently, does any act referred to in Section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both."

Case Laws on Hacking

There are very few cases on Hacking around the world, let alone a selected few in India. There exists the case of *DPP v. Bignell*[1], here two police officers were charged for using the police national computer to gain access to details of motor cars for private purposes and they were charged with unauthorized access to computer material. Their appeal was allowed by the Crown Court and later confirmed by the QB Divisional Court. It was observed that the police officers were entitled to access such computer information as part of their normal duties thereby decided that no offence had occurred. Another case is of *Nirav Navinbhai Shah and 4 Ors. v. State of Gujarat and Anr*[2], here it was alleged that hacking was done with a computer system and that the accused has stolen important data, the court held that the complainant does not contain any essential ingredient for maintaining criminal proceedings for the alleged offence which resulted in the quashing of the FIR has the defense submitted that the alleged material that has been said to be stolen exists on other sites and the courts believed that the offence alleged is not strictly affecting or infringing any individual or citizen, so the continuation of the same is not in interest of justice and the dispute is resolved by amicable settlement.

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[1] [1998] 1 Cr App R8

[2] Criminal Misc. Application No. 10291 of 2006 Decided On: 28.09.2006

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