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Computer Related Crime in Ireland

\section*{1. INTRODUCTION}

It is a commonly held belief that the Irish legal system, in both a structural and an administrative sense, may not be able to adequately respond to an increasingly sophisticated range of criminal activities and enterprises. In a recent address the Director of Public Prosecutions, Mr. Eamonn Barnes had this to say about the present state of Irish law, as viewed in early 1991.

'While not myself a commercial lawyer, I have developed certain clear views, based on my office's experiences over the past 16 years, as to the sufficiency of our present system in this area. That experience and those views lead me to contemplate the last decade of the century with considerable pessimism. Unless we adopt new and radical ideas and concepts both in our laws and procedures, I fear that the new electronically controlled worlds of national and international banking, financial services, trade, commerce, customs, tariffs, subsidies, and interventions may rapidly become happy hunting grounds in which any reasonably sophisticated white collar criminal can roam at will, untroubled by any perturbation that his activities will be effectively checked or inhibited by the Irish Criminal Justice System.'

While the main thrust of Mr. Barnes' address was directed at the need to consider changes in both the range of offences that could be used to counteract dishonesty, and the need for some more inquisitorial model of preliminary investigation\textsuperscript{2}, Mr. Barnes made it clear that it is through the misuse of information technology that criminals, even those blessed with only modest skill and expertise, may best seek to carry out their criminal objectives. It must be conceded at the outset that Irish has has not been kept up-to-date with recent technological advances. The Irish Statute book contains piecemeal provisions which reflect an awareness of

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\textsuperscript{2} Address given to the Irish Centre for Commercial Law Studies, University College Dublin, on Thursday 21 February 1991 by Mr. Eamonn M. Barnes. Mr. Barnes spoke on the same platform as Barbara Mills, Q.C., then the Director of the Serious Fraud Office. UK legislation has moved towards this kind of procedure by way of a preparatory hearing.
specific structural\(^3\) and evidential\(^4\) problems that arise from the use of information technology, but no general response has, until recently, been attempted.\(^5\) For this reason alone the implementation of the Criminal Damage Act 1991 heralds a very significant change in Irish criminal law.\(^6\) The Republic of Ireland has joined that group of western democracies that have made specific provision in its criminal law for computer-related criminal offences. The fact that this is done via a piece of legislation which is directed at criminal damage should not allow us to overlook the fact that parts of the legislation criminalize conduct which is not always intended to cause financial loss or criminal damage. Nor does the behaviour of the computer criminal always result in financial loss or criminal damage to hardware, software, or computerized data. The Irish parliamentary draughtsman has nevertheless followed a strong trend, evident in many other countries, towards protecting business interest by producing legislation which will, it is hoped, deter persons from attempting to gain access to computerized data and computer systems, when not authorized to do so. Whether the legislation is comprehensive or sophisticated enough to respond to the kinds of activity that can be anticipated, and whether the law is readily enforceable, are amongst the issues addressed in this article. This discussion takes place against the backcloth presented by the Law Reform Commission, *Report on the Law Relating to Dishonesty* \(^7\) (hereafter referred to as the Dishonesty Paper), and the *Report of the Government Advisory Committee on Fraud* (hereafter referred to as the Maguire Report).\(^8\) The main focus of this article is to assess how existing (and proposed) Irish Criminal law measure up to the Council of Europe Select Committee Report on minimal and optional measures necessary to counteract computer-related crime.\(^9\) It is not however possible, in an article of this kind, to address other procedural issues such as jurisdiction, criminal evidence or police co-operation, but both the Dishonesty Paper and the Maguire Report address aspects of each of these important issues.

2. COMPUTER CRIME IN IRELAND – PROBLEMS OF DEFINITION

The emphasis which the Irish Parliament has placed upon the need to counteract computer-related crime through the passage of the Criminal Damage Act, 1991 must be seen in a broader context. The provisions dealing with the misuse of computer programs and computerized

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4. In respect of revenue matters see the provisions of section 113 of the Finance Act 1986, which permits the Revenue Commissioners to record, store and maintain records in electronic form. These records are thereby rendered admissible in civil and criminal proceedings. For similar provisions see section 20 of the Social Welfare Act, 1989 and section 126 of the Central Bank, Act. 1989. The Companies (Amendment) Act 1990 contains provisions relating to the transfer of documents to the Registrar of Companies other than those held in legible form: see section 249.


8. PL 9409 (February 1993).