

6. Criminal Law and Procedure

Unauthorized Computer Access Law

Law No. 128, Aug. 13, 1999. (Effective as of Feb. 13, 2000, in part, July 1, 2000).

Background:

Recent developments in the field of information and telecommunication technology have turned Japanese society into a highly network-oriented society. Both economically and socially, the computer network has literally become the foundation of society. On the other hand, the committing of so-called “hi-tech crimes” has increased significantly, owing to the development in the field of such computer networks. The number of hi-tech crimes reported in 1998 had been 415 — three times the number of such crimes reported in 1993 — and although it stayed at 357 in 1999, no one could be sure that the number of this type of crime would show a dramatic decrease in the following years.

International society has been concerned with this problem, trying to work out an “international” prevention program against such high-tech crimes. In Japan, however, unauthorized computer access — which assists the committing of network crimes, causes disorder in the network system, and further interferes with the sound development of an advanced information and telecommunication society as a whole — had not been legally prohibited nor punished prior to this legislation. In order to react both domestically and internationally to the developments mentioned above, the Diet enacted the “Unauthorized Computer Access Law”.

Main Provisions:

By prohibiting unauthorized computer access and by stipulating penal provisions for such acts and by providing for measures of by Metropolitan or the Prefectural Public Safety Commissions to prevent the recurrence of such acts, the law tries to prevent computer related crimes committed through telecommunication lines, and to maintain

order in the telecommunications, and further to contribute to the sound development of an advanced information and telecommunications society (Art. 1). The protection of safety in economic/social activities through the computer network derives from the "access control function" that is realized through the use of "identification codes". The act of "unauthorized computer access" in this statute, therefore, means the act of making available some specific use of the computer, thereby violating the access control function provided by the access administrator, by using another person's identification code, or by attacking security holes, etc. (Art. 3). The punishment for such unauthorized computer access is penal servitude not exceeding one year or a fine not exceeding 500,000 yen (Art. 8). Acts of assisting or facilitating unauthorized computer access are also punished (Arts. 4 & 9).

In addition to the prohibition of unauthorized computer access itself, the law demands the access administrator to manage the identification codes properly, and to take other necessary measures to protect a specific computer from any unauthorized computer access (Art. 5). According to the law, the Metropolitan or the Prefectural Public Safety Commissions are responsible for preventing the recurrence of such acts (Art. 6, para. 1), and the National Public Safety Commission, the Minister of International Trade and Industry, and the Minister of Posts and Telecommunications shall publicize annually the situation concerning unauthorized computer access, and the State itself should help in spreading knowledge about this legislation (Art. 7).

Editorial Note:

The law tries to prevent unauthorized computer access comprehensively. It prohibits the act of unauthorized computer access and provides punishment for such acts. Here, the prohibition is directed at the *offender* himself. At the same time, the law demands that the access administrator provide protection against such acts, and orders the administrative agencies to support him or her in providing such protection. The law thereby tries to keep the *defender* alert at all times.

The law punishes the "act" of unauthorized computer access. No kind of individual, concrete, actual harm is a requisite for the punishment. There may be an argument that the punishment provided here is

a punishment for preparation of another crime, such as theft. According to that argument, it will be very difficult to make the act of unauthorized computer access punishable, because information itself is not protected as an independent legal interest in Japan — stealing information is not punishable —, and the preparation of the crime aimed at the information itself should not be deemed punishable as well.

The legal interest protected here, however, should be considered to be the social confidence in the access control function. In fact, such a construction might result in giving sanction to the early intervention of the criminal law, which is usually seen as inappropriate. However, it is conceived that in this instance, society's need exceptionally supports the intervention.

Two Acts for the Protection of Crime Victims — ① An Amendment to the Code of Criminal Procedure (*Keisohō*) and the Law for the Inquest of Prosecution (*Kensatsushinsakaihō*), ② An Act on the Measures Accompanying Criminal Procedure for the Protection of Crime Victims and Others

Laws No. 74 and 75, 2000, May 19, 2000. (Effective as of Nov. 1, 2000, in part, June 8, 2000 or June 1, 2001)

Background:

Victims of crime suffer various forms of mental, physical, and/or financial damage/injury. Sometimes they have to undergo a burdensome criminal process. They are, indeed, one of the parties directly involved in the case. Nevertheless, they have been placed outside of the criminal procedure for a long time. The need for support for victims in criminal procedure had been recognized, and the police organization and the prosecutor's office had started creating new measures to meet such needs. Most of the measures created by those organizations, however, had been focused on the support of crime victims at the investigatory stage of the procedure, and had not been extended to the support of victims in the trial stage.

In the light of these movements, the need for the support of victims in a criminal trial became one of the major concerns in society,

and the Diet was induced to enact two laws related to the protection of crime victims.

Main Provisions:

Law No. 74 amended the *Keisohō* and *Kensatsushinsakaihō* concerning the participation of victims in a criminal trial. The amendment to the *Keisohō* contained ① measures for reducing the burden of witnesses when giving testimony, such as attendants, the use of screens during witness examination, and methods of video-linked examination and cross-examination, ② introduction of victim statements concerning their opinion about the case, and ③ the abolition of time-limitation for making complaints against sexual crimes such as rape (Art. 177, *Keihō*), compulsory indecency, (Art. 176, *Keihō*) etc.. On the other hand, the amendment to the *Kensatsushinsakaihō* focused on the widening of the range of persons qualified to request an inquest into a prosecution. As a result, the family members of a victim killed in the commission of a crime were included.

In law No. 75, the following provisions were stipulated in order to allow the victims to know what was going on in the criminal trial, and to help in redressing physical or financial damage suffered by victims. ① The victims of crime can, on request with a proper cause, read and take copies of the records of a trial (Art. 3). ② The presiding judge should take care that the victims, on request with a proper cause, be given priority in hearing the trial (Art. 12). ③ When the victim and the defendant reach an agreement as to issues civil in character, they can move jointly to have the agreement enrolled in the record of trial, and the record containing such an agreement would have the same effect as an judicial settlement, which means that it could be judicially enforced (Arts. 4–7).

Editorial Note:

The lawyers and scholars appreciated the enactments as a whole, since the laws extended victim support to the trial stage of the criminal process. But there are some criticisms of these enactments, as is perhaps the case in all enactments containing some kind of reform.

As to law No. 74, there is a division of opinion as to the constitu-

tionality of the newly introduced methods of witness examination. The Constitution provides that “the accused shall be permitted full opportunity to examine all witnesses, and shall have the right of compulsory process for obtaining witnesses on his behalf at public expense” (Art. 37, Sec. 2). The first part of the provision comes into question. Some say that the new methods of witness examination deprives the defendants (and/or the defense counsel) of the right to (cross-) examination of witnesses, which requires, in their opinion, a face to face meeting (confrontation) between the defendant/counsel and the witness. Others argue that even this type of fundamental right is not absolute, and could be limited by a public policy of providing protection to victims, or that the right is not violated when considered substantially, because the use of newly introduced methods of examination could provide more accurate and sufficient testimony, which tends to lead to the proper finding of truth.

Another argument about the reform law concerns the use of victim statements in the trial. The law allows the victims to state their opinions as to the feelings, etc. about the damage caused by the crime charged. The victim statements concerning opinions as to this point are designed to help in the assessment of a sentence, rather than in the finding of facts as to the merits of the case. The criminal procedure in Japan is distinct from that of the United States, where the stage of fact-finding and sentencing are strictly divided. In the Japanese system, these two stages are combined, and various types of materials are allowed to be introduced in the trial. As a consequence of the combined character of the Japanese trial, it has been pointed out that there are difficulties in preventing the evidence routinely introduced for the assessment of a sentence from being used in the finding of facts as to the actual commission of a crime. The same argument applies to the use of opinion statements of crime victims in a criminal trial. Of course the court should be very careful in applying these provisions. But it should be noted that the real problem lies in the present combined trial system itself.

As to law No. 75, some people indicate the insufficiency or the alienness of the newly provided protection or support for crime-victims.

① The law requires the presiding judge to take into account the vic-

tims in “hearing” the trial. Some people say that this type of victim support should have been extended further to the realization of the victim’s “right to attend the trial” which would allow him to attend the trial whenever he wished to do so. ② The new system of enrolling the agreement in criminal trial records (a system of criminal settlement) is thought to be somewhat alien in its character in relation to the original criminal procedure. It is contended, accordingly, that the courts should be very careful in applying those provisions.

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7. Commercial Law

An Amendment to the Commercial Law: Creating Laws for Corporate Separation and Revising the Laws for Stock Option etc.

Law No. 90, May 31, 2000 (Effective on April 1, 2001).

Background:

Today’s world economy is dramatically changing. The development of computer networks, information technology, and new types of transactions, including electronic commerce, are exerting a great influence on the economic activities of corporations, fostering the internationalization of transactions. Under these circumstances, corporations are required to enhance management efficiency and intercorporate competitiveness, so business leaders worldwide have been calling for the consolidation of rules not only governing these transactions but also governing corporate organization or restructuring.

The Japanese government has conducted a thorough review of its own legal framework for corporate organization in the last decade, and the Commercial Law has been amended more than once. For example, in 1997, the Commercial Law was amended to laws regarding mergers and acquisitions and, in 1999, laws were created concerning share