

Octopus Interface Conference – Cooperation against Cybercrime

**Cybercrime legislation in Brazil**

**Presentation by Senator Eduardo Azeredo**

Strasbourg, 11 June 2007

Ladies and Gentlemen:

First of all, I wish to express my recognition to the Council of Europe for the kind invitation to attend this Conference on Cybercrime and speak on the state of the legislation to fight cybercrime in Brazil.

It is for me a great honour to represent my country in the debate of a matter related both to my eleven-year professional career as a systems analyst and to my career in the management of public and private information technology businesses.

Last April 10, the Federal District Civil Police intercepted communications among four middle-class youths in Brasília - Brazil's national capital, who, according to the news, were using the instantaneous communication afforded by the internet to plot the killing of a fifth youth.

Just a few days before, the small town of Jacutinga, in the south of the state of Minas Gerais, had been deeply alarmed by a virtual community called, created on the Orkut relationship site – the contents of this community were anonymous and included messages which were offensive to town inhabitants. A similar case was registered in Petrolina, in the state of Pernambuco, Northeast of Brazil.

These are but three instances of crimes that can be perpetrated through the use of information technologies. In the first instance, there would be criminal conspiracy - a possibility raised by the police, and in the two other instances, there would be libel or injury.

Still other instances? I believe we can count on the fingers of our hands, even in this Conference, the persons who have never been victims of virus dissemination, password theft, cell phone cloning, credit card fraud, forgery, hacking, and so on.

For this reason – and for several others I will be mentioning here, I have been pleading that my distinguished colleagues at the Federal Senate in Brazil should approve the substitute bill I have introduced with a view to typifying cybercrimes and stipulating the corresponding penalties. The matter is now under consideration at the Federal Senate Constitution and Justice Committee (CCJ), and will subsequently be voted on and forwarded to the Chamber of Deputies.

The following is a list of data provided by the Computer Emergency Response Team – Brazil (cert.br), established by the Brazilian Internet Steering Committee, connected to ICANN – Internet Corporation for Assigned Names and Numbers:

- Attempted fraud over the internet rose 53% in Brazil in 2006. In 2005, 27.3 thousand cases of attempted fraud were recorded; last year, this number rose to 41.8 thousand. However, the real numbers may be much higher than that, since cert.br takes into consideration only data reported by users.
- As a whole, cert.br received reports of 197 thousand incidents related to the internet in 2006. This means a 191% rise as compared to 2005.
- The primary targets are persons who do banking or shopping over the internet. Bank losses due to internet fraud are estimated at over 120 million euros per year.
- These numbers rank Brazil in the second place among the 10 countries with the highest number of reported incidents, concentrating 21.2% of the reports, second only to the United States.

An article appearing in the Brazilian press late last year reduced our bill of law to the utterly mistaken stigma of “controlling the internet”! That’s absolutely not the case! We are not talking about censorship, tracking, limiting the freedom of expression, or invading privacy!

Actually, we are aiming at expanding Brazilian legislation, so as to cover the new offenses that have sprung up together with the development of information technologies. Essentially, we are proposing to fight crime!

Under the terms of our bill of law, the internet provider is responsible for preserving the data related to the CONNECTIONS and is subject to civil and penal liability for their entire confidentiality. Furthermore, the provider may only release such information, including for auditing purposes, by virtue of express court order.

Therefore, our bill of law simply intends to turn a general practice into law – any computer user nowadays furnishes some information when he signs up with an ISP.

Our proposal does not impose restrictions, does not track users, does not constitute an invasion, as alleged by the media.

The proposal I have introduced brings together three draft bills one of them introduced in 1996, that is, ten years ago, and updated in 1999. With this proposal, we are altering, expanding and, especially, modernizing six Brazilian pieces of legislation. In the Criminal Code and the Military Criminal Code, the following are the eleven offenses to be typified:

- the dissemination of malicious codes aimed at stealing passwords (phishing);
- credit card fraud;
- cell phone cloning;
- offenses against honor (libel, slander, and defamation (with the stipulation of increased penalties);
- dissemination of malicious codes aimed at causing harm (viruses, trojans, worms, etc);
- unauthorized access to a computer network;
- unauthorized access to information;
- unauthorized possession, transportation, or provision of such information;
- unauthorized disclosure of a databank;
- compound larceny with the use of computer systems;
- disruption of public utility services;
- and attacks against the computer network - DoS, DDos, DNS, etc.

In the Criminal Procedural Code, we are expanding preventive detention to apply to cybercrimes. The Act on Uniform Repression by the Federal Police is being expanded to cover interstate and international offenses using IT. We are also expanding the Telephone Interception Act to cover cybercrimes and altering the Consumer Protection and Defense Code to include a security alert for the ordinary consumer.

Copyright, proprietary software rights, and rules to fight piracy in music and videos, as well as child pornography, racism and xenophobia offenses, are all dealt with in specific pieces of legislation.

As you can see, the inspiration for our bill of law is no other than the International Convention on Cybercrime, the Budapest Convention, the very subject matter of this Conference.

Therefore, our substitute bill seeks to harmonize Brazilian legislation with the terms of the Convention, as shown by our answers to the Questionnaire in preparation of this Conference. And we are also urging the Ministry of External Relations and other Brazilian officials to give close consideration to the possible adhesion of Brazil to a document that provides for bold initiatives to fight cybercrime.

I endeavored all efforts to prepare a truly democratic proposal. Traveling across the country, I delivered lectures and took part in technical meetings on the issue, collecting suggestions and explaining a matter which has been contemplated by Parliament for over a decade.

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This is the outcome of thorough work, which I carried out together with highly competent technicians, the Senate Consultants, expert attorneys, military officers of the three Armed Forces, and judges having a sound knowledge of criminal issues.

I hope that our participation in this Conference will enable us to follow more closely the works of the Convention and of its member States, for Brazil should no longer postpone joining the efforts of developed, modern nations, against offenses that have their effects intensified by virtue of the speed and amplitude afforded by information technologies.

Thank you very much for your attention.