



## Definitions: "without right"

Title III of the Anticorruption Law no 161/2003 (Law on cybercrime)  
Article 35 (2):

A person acts without right in the following situations:

- a) is not authorised, in terms of the law or a contract;
- b) exceeds the limits of the authorisation;
- c) has no permission from the qualified person to give it, according to the law, to use, administer or control a computer system or to carry out scientific research in a computer system.

## Definitions

MACEDONIA	ROMANIA Law on cybercrime	SERBIA Criminal Code (CC)
	Article 35: •computer system •computer data •service provider •traffic data •child pornography -//- •automatic data processing •computer program •data on the users •security measures •without right	•computer data •computer network -//- •computer program •computer virus

## Substantive law- Illegal access

CONVENTION Article 2	ROMANIA Art. 42 - Law on cybercrime
>access to the whole or any part of a computer system without right ▪ <i>infringing security measures</i> ▪ <i>with the intent of obtaining computer data or other dishonest intent</i> ▪ <i>in relation to a computer system that is connected to another</i>	(1) The access, without right, to a computer system (2) Where the act is committed with the intent of obtaining computer data (3) Where the act in paragraphs 1-2 is committed by infringing the security measures

## Substantive law - Illegal access

MACEDONIA Article 251 (2) CC	SERBIA Art. 302 CC
Whoever, without authorization, entering into somebody else's computer or system with intention to use data or programs in order to obtain illegal material or other gain for himself or for other or with intention to cause material or other damage or transfer the computer data that are not intended for him and which obtained without authorization	(1) Whoever, by circumventing protection measures, accesses a computer or computer network without authorisation, or accesses electronic data processing without authorisation. (2) Whoever uses data obtained in manner provided under paragraph 1 of this Article. (3) If the offence specified in paragraph 1 of this Article results in hold-up or serious malfunction in electronic processing and transfer of data or of the network, or other grave consequences have resulted.

## Substantive law - Illegal interception

CONVENTION Article 3	ROMANIA Art. 43 - Law on cybercrime
<p>Interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data.</p> <p>* committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>1) The interception without right, of non-public transmissions of computer data to, from or within a computer system.</p> <p>(2) The same penalty shall sanction the interception, without right, of electromagnetic emissions from a computer system carrying non-public computer data.</p>

## Substantive law- Illegal interception

MACEDONIA	SERBIA

## Substantive law- Data interference

CONVENTION Article 4	ROMANIA Art. 44 - Law on cybercrime
<p>The damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>▪ result in serious harm.</p>	<p>1) The alteration, deletion or deterioration of computer data or restriction to such data without right.</p> <p>2) The unauthorised data transfer from a computer system.</p> <p>3) The unauthorised data transfer from computer data storage medium.</p>

## Substantive law- Data interference

MACEDONIA Article 251 (1) CC	SERBIA Art. 298 CC
<p>(1) One that will, without authorization, erase, change, damage, cover or in other way will make unusable a <u>computer data or program</u> or device for maintenance of the computer system, or will make impossible or more difficult the use of a computer system, data or program or the computer communication.</p>	<p>(1) Whoever without authorization deletes, alters, damages, conceals or otherwise makes unusable a <u>computer datum or program</u>.</p>

## Substantive law - System interference

CONVENTION Article 5	ROMANIA Art. 45 - Law on cybercrime
The serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.	The act of causing serious hindering, without right, of the functioning of a computer system, by inputting, transmitting, altering, deleting or deteriorating computer data or by restricting the access to such data.

## Substantive law- System interference

MACEDONIA Article 251 (1), 251-a (2) (3) CC	SERBIA Art. 300 CC
<p>(1) - without authorization, erase, change, damage, cover or in other way will make unusable a computer data or program or device for maintenance of the computer system, or will make impossible or more difficult the use of a computer system, data or program or the computer communication.</p> <p>(2) - cause damage to somebody else's computer, system, data or program using computer virus.</p> <p>(3) - if grater damage is caused with the crime stipulated in the paragraph 2 or if the crime is performed by a group formed with intention for performing that crime, the perpetrator.</p>	<p>(1) Whoever makes a computer virus with intent to introduce it into another's computer or computer network.</p> <p>(2) Whoever introduces a computer virus into another's computer or computer network thereby causing damage.</p>

## Substantive law - Misuse of devices

CONVENTION Article 6	ROMANIA Art. 46 - Law on cybercrime
<p>The production, sale, procurement for use, import, distribution or otherwise making available of:</p> <ul style="list-style-type: none"> <li>- a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in Articles 2 through 5</li> <li>- a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed</li> <li>- With the intend to be used ...</li> <li>- the possession</li> </ul>	<p>(1) The production, sale, import, distribution or making available, in any other form, without right, of a:</p> <ul style="list-style-type: none"> <li>a) device or a computer programme designed or adapted</li> <li>b) password, access code or other such computer data allowing total or partial access to a computer system</li> </ul> <p><i>for the purpose of committing any of the offences established in accordance with Articles 42-45</i></p> <p>(2) The possession, without right, of a device, computer program, password, access code or computer data referred to at paragraph (1) for the purpose ....</p>

## Substantive law- Misuse of devices

MACEDONIA Article 251 (6), 251 b (6) 379 a (3) CC	SERBIA Art. 199 (4) CC
<p>The one that, without authorization, produces, purchases, sells, holds or makes available to other, special facilities, equipment, computer programs or computer data intended or suitable for performing the crimes stipulated...</p>	<p>(4) Whoever produces, imports, puts into circulation, sells, rents, advertises for sale or renting, or keeps for commercial purposes, equipment and devices whose basic or prevailing purpose is to remove, bypass or forestall technological measures intended for prevention of <u>violation of copyright and other similar rights</u>, or who uses such equipment or devices with an aim to violate copyright or other similar right.</p>

## Substantive law- Computer - related forgery

CONVENTION Article 7	ROMANIA Art. 48 - Law on cybercrime
<p>The input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible.</p> <p>▪ <i>an intent to defraud, or similar dishonest intent, before criminal liability attaches.</i></p>	<p>The input, alteration or deletion, without right, of computer data or the restriction, without right, of the access to such data, resulting in inauthentic data with the intent to be used for legal purposes</p>

## Substantive law- Computer - related forgery

MACEDONIA Article 379 a (1) CC	SERBIA
<p>(1) One that unauthorized will produce, input, change, delete or make useless, with an intention to use them as real, computer data or programs which are determined or suitable to serve as evidence of facts with a value for the legal relations or one that will use such data or programs as real.</p>	

## Substantive law - Computer-related fraud

CONVENTION Article 8	ROMANIA Art. 49 - Law on cybercrime
<p>➤ the causing of a loss of property to another person by:</p> <ol style="list-style-type: none"> <li>any input, alteration, deletion or suppression of computer data;</li> <li>any interference with the functioning of a computer system,</li> </ol> <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>	<p>The causing of a loss of property to another person by inputting, altering, or deleting of computer data, by restricting the access to such data or by any interference with the functioning of a computer system with the intent of procuring an economic benefit for oneself or for another.</p>

## Substantive law- Computer - related fraud

MACEDONIA Article 251-b (1) CC	SERBIA Art. 301 (1) CC
<p>Art.251 (2)(3)(4) - country profile</p> <p>Art. 251-b The one that, with intention to obtain an illegal material gain, with inputting of untrue data, not inputting true data, forging electronic signature or in other way cause untrue result of the electronic processing and transfer of the data.</p>	<p>Whoever enters incorrect data, fails to enter correct data or otherwise conceals or falsely represents data and thereby affects the results of electronic processing and transfer of data with intent to acquire for himself or another unlawful material gain and thus causes material damage to another person</p>

## Substantive law - Child pornography

CONVENTION Article 9	ROMANIA Art. 51 - Law on cybercrime
<p>1.</p> <p>a. producing child pornography for the purpose of its distribution through a computer system;</p> <p>b. offering or making available child pornography through a computer system;</p> <p>c. distributing or transmitting child pornography through a computer system;</p> <p>d. procuring child pornography through a computer system for oneself or for another person;</p> <p>e. possessing child pornography in a computer system or on a computer-data storage medium</p> <p>Define terms: "child pornography" and "minor"</p>	<p>Production child pornography for the purpose of distribution, offering or making available, distributing or transmitting, procuring for oneself or for another person child pornography through a computer system or</p> <p>Possession, without right, child pornography in a computer system or in a computer-data storage medium.</p> <p>"Child pornography" - Art. 35 (1) i)</p>

## Substantive law - Child pornography

MACEDONIA Article 193 CC	SERBIA Art. 185 CC
<p>(1) A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic content to a child, or shows him a pornographic performance.</p> <p>(2) When the crime was performed through the public media.</p> <p>(3) The punishment from item 2 shall be applied to a person who abuses a juvenile in the production of audio-visual pictures or other objects with a pornographic content or for pornographic presentations.</p>	<p>(1) Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a child or shows to a child a pornographic performance.</p> <p>(2) Whoever uses a child to produce photographs, audio-visual or other items of pornographic content or for a pornographic show.</p> <p>(3) Whoever sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from offences specified in paragraph 2 of this Article.</p>

## Substantive law - infringements of copyright and related rights

CONVENTION Article 10	ROMANIA Law on copyright (No 8/1996)
<p>- the law of that Party (the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty)</p> <p>- law of that Party (the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty)</p> <p><i>committed wilfully, on a commercial scale and by means of a computer system.</i></p>	<p>- making available to the public including by Internet or other computer networks the protected work</p> <p>- unauthorised reproduction of computer software in any of the following ways: install, storage, running or execution, display or intranet transmission.</p> <p>-distributing, importing in order to make available to the public, by digital technology, the protected work of which the information in electronic form on copyright or related rights were removed or altered without authorisation.</p>

## Substantive law - infringements of copyright and related rights

MACEDONIA Article 286 CC	SERBIA Art. 199, Art. 200 CC
<p>(1) A person who without authorization uses, publishes, cedes or transfers another's registered or protected invention.</p> <p>(2) The sentence stipulated in the paragraph (1) shall be imposed on the person that will another person's software.</p> <p>Law on Copyrights and Related rights of the Republic of Macedonia</p> <p>&gt; computer program - protected under law</p>	<p>- publishes, records, copies or otherwise presents in public, in part or entirety, a copyrighted work, performance, phonogram, videogram, show, computer programme or database.</p> <p>- puts into circulation or with intent to put into circulation keeps illegally multiplied or illegally put into circulation copies of copyrighted work, performance, phonogram, videogram, show, computer program or database.</p> <p>- produces, imports, puts into circulation, sells, rents, advertises for sale or renting, or keeps for commercial purposes, equipment and devices whose basis or prevailing purpose is to remove, bypass or forestall technological measures intended for prevention of violation of copyright and other similar rights, or who uses such equipment or devices with an aim to violate copyright or other similar right, shall be punished with a fine or imprisonment up to three years.</p> <p>Art. 200 - unauthorized removal or altering of electronic information on copyright and related rights</p>

## Substantive law: Art. 11-13

Convention	Macedonia	Romania	Serbia
Article 11 - Attempt and aiding or abetting	Attempt - Partially covered (art. 251 (7) CC) Aiding - covered (Art. 34 (1) CC)	Attempt - Covered (Art. 47, 51(2) Law on cybercrime) Aiding - Covered CC	Attempt - Partially covered (art. 30 CC) Aiding - covered (Art. 35 CC)
Article 12 - Corporate liability	Partially covered	Covered ART. 191 - Criminal Code (amended)	Not covered
Article 13 - Sanctions and measures	Partially covered	Covered Art. 42 - 49, 51 Law on cybercrime ART. 53 <sup>1</sup> Criminal Code Law 8/1996 (amended)	Partially covered

## Procedural law

CONVENTION	ROMANIA Art. 54 - Law on cybercrime
Article 16 - Expedited preservation of stored computer data	In urgent and duly justified cases, if there are data or substantiated indications regarding the preparation or the committing of a criminal offence by means of computer systems, for the purpose of gathering evidence or identifying the perpetrators, it can be ordered the expeditious preservation of the computer data or traffic data, which are subject to the danger of destruction or alteration.  The preservation is ordered by the prosecutor or during the trial by the court order The measure - over a period not longer than 90 days (can be exceeded for 30 days).

## Expedited preservation of stored computer data

MACEDONIA	SERBIA
	It is not directly prescribed, but general provisions of article 85 paragraph 1, 146 paragraph 1 and 7, article 155, and 255 paragraph 2, can be applied

## Procedural law

CONVENTION	ROMANIA Art. 54 (5) - Law on cybercrime
Article 17 - Expedited preservation and partial disclosure of traffic data	In case the data referring to the traffic data is under the possession of several service providers, the service provider is bound to immediately make available for the criminal investigation body the information necessary to identify the other service providers in order to know all the elements in the communication chain used

### Expedited preservation and partial disclosure of traffic data

MACEDONIA	SERBIA
	For these purposes article 84, and 85 paragraph 2,3 and 4, and 147 paragraph 2 of CPC can be applied.

### Procedural law

CONVENTION	ROMANIAN
Article 18 - Production order	<p>Art. 16 - Law no. 508/2004 on establishing, organizing and operating of the DIOCTO</p> <p>Order communication of the originals or copies of any data, information, documents, banking, financial or accounting documents and other such items, by any person who holds them or from whom they emerge, and such person shall be bound to comply</p> <p>Failure to observe the obligation in paragraph (2) shall entail judicial liability, under the law.</p> <p>Art. 35 g) - Law on cybercrime - "data on the users"</p>

### Production order

MACEDONIA	SERBIA
	Article 85 paragraph 1 of CPC can be applied.

### Procedural law

CONVENTION	ROMANIA
Article 19 - Search and seizure of stored computer data	<p>Art. 54 - Law on cybercrime; Art. 96, 99 (CPC)</p> <p>Whenever for the purpose of discovering or gathering evidence it is necessary to investigate a computer system or a computer data storage medium, the prosecutor or court can order a search.</p> <p>When, on the occasion of investigating a computer system or a computer data storage medium it is found out that the computer data searched for are included on another computer system or another computer data storage medium and are accessible from the initial system or medium, it can be ordered immediately to authorize performing the search in order to investigate all the computer systems or computer data storage medium searched for.</p> <p>ART. 96 - Confiscation of objects and writings</p> <p>ART. 99 - Confiscation by force of objects or writings - of Criminal procedure Code.</p>



## Search and seizure of stored computer data

MACEDONIA	SERBIA
For Art. 19(1)- Art. 251(8) of Macedonian Criminal Code	Article 85, 146 paragraph 5, and 147 paragraph 1 and 2 of CPC can also be applied for these purpose
(8) The special facilities, equipment, computer programs or data intended for the crime shall be confiscated.	<p>Art.146, 147 CPC - secret audio and visual surveillance of a suspect and the presentation of evidence to the investigating judge.</p> <p>Art. 146 is limited to physical communication and does not cover the exchange of data.</p>

## Procedural law

CONVENTION	ROMANIA
Article 20 - Real-time collection of traffic data	

## Real-time collection of traffic data

MACEDONIA	SERBIA

## Procedural law

CONVENTION	ROMANIA
Article 21 - Interception of content data	<p>Art. 57 - Law on cybercrime</p> <p>The access to a computer system, as well as the interception or recording of communications carried out by means of computer systems are performed when useful to find the truth and the facts or identification of the perpetrators cannot be achieved on the basis of other evidence</p>

## Interception of content data

MACEDONIA	SERBIA
	For these purposes article 146 paragraph 3,4 and 5, and article 155 can be applied.

## Conclusions

- *The Convention on Cybercrime provides a guideline for the development of legislation on cyber crime*
- *Convention is harmonizing the domestic criminal substantive law elements of offences and connected provisions in the area of cyber crime*
- *The substantive law provisions and procedural law directly at fighting against cybercrime*

THANK YOU FOR YOUR  
ATTENTION

[cschulman@just.ro](mailto:cschulman@just.ro)