

**ԼԻՍՈՎԻՅ ԱՐՏԵՄ**

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ԿԱՆԽԱՐԳԵԼՄԱՆ ՄԵԹՈԴՆԵՐԸ***

**УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА КИБЕРПРЕСТУПЛЕНИЯ В УКРАИНЕ И
МЕТОДЫ ИХ ПРЕДОТВРАЩЕНИЯ***

**CRIMINAL LIABILITY FOR CYBERCRIMES IN UKRAINE AND
METHODS FOR PREVENTING***

Until very recently Ukraine did not have a special cybersecurity law. While cybercrime has been prospering in Ukraine for many years, development of a stable cybersecurity policy fold behind. Ukrainian legislation to tackle crime in the cyberspace only partially responds the needs of the country and did not always cover the key elements required to maintain effectiveness. Thus, up until October 2017 the legal framework in this area included the following typical pieces of legislation:

- Law of Ukraine On Information No 2657-XII of 2 October 1992;
- Law of Ukraine On State Secrets No 3855-XII of 21 January 1994;
- Law of Ukraine On Protection of Information in Telecommunication Systems No 80/94-BP of 5 July 1994;
- Law of Ukraine On Telecommunications No 1280-IV of 18 November 2003;
- Law of Ukraine On State Service of Special Communication and Information Protection of Ukraine No 3475-IV of 23 February 2006;
- Law of Ukraine On Personal Data Protection No 2297-VI of 1 June 2010.

It is difficult to find exact definition of “cybercrime” term. Despite the fact that Convention on Cybercrime of the Council of Europe (The Budapest Convention) is the main international treaty which focused on the combating cybercrimes and ensuring cybersecurity on EU territory, it does not provide any definition of “cybercrime”.

Though, Ukrainian Law on Basic Principles of Ukraine’s Cyber Security contains definition of “cybercrime”. Due to Point 8 of Part 1 of Article 1 of this Law it is stated:

<...> cybercrime (computer crime) is a culpable, socially dangerous act in cyberspace and/or with its use, liability for which is provided by Ukrainian law on criminal liability and/or which is recognized as crimes under international treaties of Ukraine¹.

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¹ Pro osnovni zasady zabezpechennia kiberbezpeky Ukrainy: zakon Ukrainy [Law of Ukraine] vid 07.11.2017 roku № 2163-VIII // Vidomosti Verkhovnoi Rady Ukrainy (VVR). URL: <https://zakon.rada.gov.ua/laws/show/2163-19> (accessed: 09.05.18) (in Ukrainian).



This law has been a basic law in Ukraine, which determines legal and organizational basics for ensuring protection of vital interests of man and the citizen, society and the State, national interests of Ukraine in cybersecurity. The document defines the basic infrastructure objects, which compose critical infrastructure of the country that needs the best possible cyber protection.

The problem of cybercrime and establishing criminal liability for its commitment remains the essential area of concerns in the field of copyright. After the global expansion of the Internet and a move to the digital age, criminal offences have moved to the Internet space. Owing to the fact that investigation of computer crimes (cybercrimes) is far more complicated, than common law crimes, prevention and punishment for their perpetration entail more complexity and modernity.

The purpose of the article is to explore which types of cybercrimes have the most disruptive influence on the territory of Ukraine and what criminal liability is stated for such crimes. It is important aspect that experience of the other countries in combating of cybercrimes is much more progressive in comparison with those in Ukraine. Thus, in this article we will give proposals on methods of preventing cybercrimes that are used in other countries, for Ukraine.

Among the scholars who deals with this issue, the following ones can be distinguished: O. Bandurka O., Baturina Y., Hladun O., Vehova V., Golubeva V., Azarov D., Burda S., Migalatyuk V. and others.

Such foreign law scholars as Prof. Dr. Marco Gercke, Rachna Buch, Pooja Kalola, Prof. Solange Ghernaouti-Helie and others investigated problems of criminal liability for the cybercrimes worldwide.

Keywords: cybercrime; criminal liability for the cybercrime; computer crimes; crime on the Internet; Internet crime; criminal offence on the Internet.

Merriam-Webster's dictionary, which is most trusted online dictionary in the USA for English word definitions, determines "cybercrime" as "criminal activity (such as fraud, theft, or distribution of child pornography) committed using a computer especially to illegally access, transmit, or manipulate data"¹.

In our times a big part of different information is widespread on the Internet, starting from articles, news, books and finishing with a data of users which they permanently leave while register on sites, fill out Google Forms or set up online orders. In reality, they provide plenty of personal information (full name, day of birth, State, city of birth, domicile, telephone number, data card etc.) to third parties, that successfully used by offenders on the Internet after illegally and fraudulently receiving access to this data.

After current Criminal code of Ukraine was accepted and taken in action the unified registry of pre-trial investigations, high incidences of qualification of crimes in the field of computer technologies have started to be qualified under an article 185 of Criminal code of Ukraine, then in most cases it deals with offences against property, committed with the use of payment cards or card details.

In addition, after analysis of data of the unified registry of pre-trial investigations (form 1), it can be concluded that qualification of cybercrimes under the articles, that can't be found in Section XVI of Criminal code of Ukraine, causes inaccuracy in the statistical accounting and becomes one of the reasons for impossibility of establishment of perception of crime. As a result, some part of crimes in the field of use of electronic computing machines (computers), systems, computer networks and telecommunications networks in the general structure of criminality is insignificant and is less than 1%. At the same time in foreign countries, such as Georgia², Germany, Switzerland, «computer crime»

¹ Internet source. <https://www.merriam-webster.com/dictionary/cybercrime>.

² Kompyuternyye prestupleniya v ugovnom zakonodatelstve stran SNG (Vyipiska iz Ugolovnogo kodeksa Gruzii): Tsentri issledovaniya kompyuternoy prestupnosti (crimeresearch.ru) [Elektronniy resurs]. – Rezhim dostupu: http://www.crime-research.ru/articles/Criminal_Code. – 2004. – 27 iyunya.

has legal definition and enshrined as legal concept. The term «cyber crime» has been used in designation of these crimes in USA. Though, the prosecutor of San Francisco prosecutor's office Del Rosario Conrad who is in the head of structural unit for the detection and investigation of crimes in mentioned area, proposes to use more inclusive term such as «high tech crimes», because this sphere of activity extends to ordinary crimes that are committed using technology innovations¹. It should be noted, that term «high tech crimes» is literal translation of collocation «crime hide touch» and in Ukraine is used as definition related with information technologies and space applications. Starting point for definition of concepts, which legislator will use in area of countering corruption, is the Council of Europe Convention on Cybercrime, which signed 23.11.2001 (hereinafter - Convention). For today it was ratified by 18 states and signed by 25 countries, including Ukraine (7.09.2005)². In time, in July of 2006, there was ratified Additional Protocol to Convention concerning criminalization of racist or xenophobic acts committed through computer systems (hereinafter-Additional Protocol). Actually, terms used in Convention and Additional Protocol haven't been enshrined in Ukrainian domestic legislation.

Convention includes 4 groups of crimes connected with the use of computing technologies as a tool for their commitment. The first group comprises crimes against confidentiality, integrity and availability of computing data and systems (unlawful access, interception, interference with data, impact on functioning of system and also unlawful use of devices and software). The second group comprises crimes related to use of data-processing tools (forgery, fraud). The third group comprises crimes related to the data content (child pornography), and to the fourth group – offences related to copyright and related rights infringement.

States which ratified Convention took responsibility to review their legislation with the purpose to bring it into the line with the recommendations stated in Convention.

Analysis of current Ukrainian legislation demonstrates that criminal liability is established for almost all crimes referred to in the Convention. At this time Chapter XVI of Criminal Code of Ukraine provides criminal liability for the commitment of criminal offenses related to the use of electronic computing machines (computers), systems and computer networks and telecommunication networks. There is a list of them:

- 1) Article 361. Unauthorized interference with the work of electronic computing machines (computers), automated systems, computer networks or telecommunication networks;
- 2) Article 361-1. Creation for the purpose of use, dissemination and distribution of harmful software or hardware, as well as their dissemination and distribution;
- 3) Article 361-2. Unauthorized dissemination and distribution of information with restricted access, which is stored in the electronic computing machines (computers), automated systems, computer networks or information-carrying medium;
- 4) Article 362. Unauthorized actions with information, which is processed in the electronic computing machines (computers), automated systems, computer networks or saved on the information-carrying medium, committed by a person entitled to access to such information;
- 5) Article 363. Violation of operating rules of electronic computing machines (computers), automated systems, computer networks or telecommunications networks and the order or rules protection of information which is processed therethrough;

¹ Materiali robochoyi zustrichi v Natsionalniy akademiyi prokuraturi Ukrayini 15 veresnya 2015 roku.

² Pro ratifikatsiyu Konventsiyi pro kiberzlochinnist: Zakon Ukrayini vid 7 veresnya 2005 roku # 2824-IV // Vidomosti Verhovnoyi Radi Ukrayini. – 2006. – # 5. – S. 128. – S. 71.



6) Article 363-1. Impeding the work of electronic computing machines (computers), automated systems, computer networks or telecommunication networks by mass distribution of electronic messages¹.

The above mentioned crimes don't exhaust the list of cybercrimes stated in Section XVI of Special section of Criminal code of Ukraine. Hence, some kinds of crimes have been existed long before the first computers were created, can be committed with use of information technologies. Use of computers simplifies commitment of crime or makes its commitment impossible in new forms. Thus, we can consider such types of crimes as such under Convention. In particular, the criminal liability is provided for other crimes and anchored in Article 190, clause 3 (unlawful fraudulent with use of computers), Article 200 (use of fraudulent electronic means of access to bank accounts), clause 4 Article 301 (sale and distribution of pornographic material with use of computers) of Criminal Code of Ukraine.

Behind that, in Ukraine criminal liability is also provided for other activities, which can be committed by using of information technologies, but they are not contained in Convention.

The first group of these crimes related to unlawful purchasing and (or) selling products forbidden for free circulation, and can be committed with the use of Internet. Among them are also unlawful purchasing or selling of drugs, psychotropic substances and their counterparts (Article 307 of Criminal Code of Ukraine); unlawful purchasing or selling of firearms, ammunition, explosive substances, selling of bladed weapons (Article 263 of Criminal Code of Ukraine); purchasing of radioactive materials (Article 265 of Criminal Code of Ukraine).

The second group comprises crimes related to data content. Criminal law of Ukraine, in contrast to Convention, implies the liability for the 'traditional' criminal crimes are committed with use of computer and through the Internet. There is a list of them:

Infringements of copyrights and related rights (Article 176 of Criminal Code of Ukraine);

Fraud (Article 190 of Criminal Code of Ukraine);

Illegal actions in respect of remittance documents, payment cards and other means providing access to bank accounts, and equipment for their production (Article 200 of Criminal Code of Ukraine);

Evasion of taxes, fees or other compulsory payments (Article 212 of Criminal Code of Ukraine);

Importation, making, sale or distribution of pornographic items (Article 301 of Criminal Code of Ukraine);

Illegal collection for the purpose of use or use of information on trade secrets (Article 231 of Criminal Code of Ukraine).

Therefore, due to forensic aspect, 'the cybercrimes' are statutory socially dangerous actions which committed and investigated with use of the Internet².

In the raw of international treaties and Conventions is stated that 'cybercrime' threatens both national security of particular countries and human security and an international order in our time. International people's concern about development of cybercrime is reflected in such international treaties as: Bangkok declaration on Crime Prevention and Criminal Justice (2005)³, the Bucharest Declaration on International Cooperation on Countering Terrorism, Corruption and Transnational

¹ Criminal Code of Ukraine: enters into force on September 1, 2001. № 2341-III (<https://www.legislationline.org/documents/action/popup/id/16257/preview>).

² Bilenchuk D.P. Kibreshakhrai – kto vony? //Militsiia Ukrainy, 1999. №7-8. P. 32-34.

³ Bangkok Declaration on Crime Prevention and Criminal Justice, endorsed by General Assembly of the United States, P. 7 (<https://www.unodc.org/pdf/crime/congress11/BangkokDeclaration.pdf>).

Organized Crime (2006)¹, The world's summit on the information society and The Convention on Cybercrime of the Council of Europe (CETS No.185) (2004)². All these international documents are aimed at ensuring common crime-fighting in the way of enacting of particular acts of law which shall not contradict neither laws of particular country nor clauses of treaties ratified by such country.

Despite the fact of enlarging of cybercrimes worldwide, there are still plenty of ways how to protect your personal data or another information from stealing it and prevent cybercrimes being aware of computer and Internet literacy.

To sum up, there are specific ways for keeping any information secured:

Creating of a strong password, data protection and periodical change of it;

Keep yourself aware about pervasive methods of committing cybercrimes used by criminals for being able to prevent them;

Protection of devices, installing of antiviruses;

Use of the secure networks;

Check of your current accounts;

Use of instruments for confidentiality and secure your use of browsers.

Ամփոփագիր¹ Հոդվածը նվիրված է կիբեռիանցագործությունների համար նախատեսված քրեական պատասխանատվության հիմնախնդիրներին: Մատնաշվում է, որ կիբեռիանցագործությունները ժամանակակից աշխարհում հանցավորության ամենալայն տարածում ունեցող դրսևորումներից են, որոնք իրականացվում են համակարգիչների միջոցով՝ տվյալների բազա մուտք գործելու, ապօրինի ձևով դրանք օգտագործելու և այլ եղանակներով: Միևնույն ժամանակ ներկայացվում են այս հանցագործությունների կանխարգելման հնարավոր ուղիներն ու հեռանկարներն Ուկրաինայի օրինակով: Քննարկվում են նաև համացանցում անձնական տվյալների արդյունավետ պաշտպանության ձևերն ու եղանակները:

Аннотация: В статье рассмотрены вопросы уголовной ответственности за киберпреступления. Подчеркивается, что в современном мире киберпреступления являются одними из наиболее распространенных проявлений преступности, которые совершаются посредством компьютеров, для получения доступа к базам данных, их незаконного использования и т.п. Одновременно, представлены возможные направления и перспективы предупреждения данных преступлений на примере Украины. В статье обсуждены также способы и средства эффективной защиты персональных данных в сети интернет.

Հիմնարաներ¹ կիբեռիանցավորություն, տվյալների ապօրինի օգտագործում, անձնական տվյալներ:

Key words: cybercrimes, illegal data use, personal data.

Ключевые слова: киберпреступность, незаконное использование данных, персональные данные.

¹ The Bucharest Declaration on International Cooperation on Countering Terrorism, Corruption and Transnational Organized Crime (https://www.unodc.org/unodc/en/press/releases/press_release_2006_11_16.html).

² The Convention on Cybercrime of the Council of Europe (CETS No.185), P. 22 (<https://www.coe.int/en/web/cybercrime/the-budapest-convention>).