



LAW campaign



Right to know day 2006

SINCE 2002, freedom of information advocates around the world have been working together to promote the right of access to information for all people and recognize the benefits of transparent and accountable governments. We use this day as a way to share ideas, strategies and success stories about the development of freedom of information laws and genuinely transparent governance.

International Right to Know Day was established to mark the founding on 28 September 2002 of the global Freedom of Information Advocates Network. In 2006 the 4th International Right to Know Day is being celebrated. The aim of Right to Know Day is to raise awareness of every individual's right of access to government-held information: the right to know how elected officials are exercising power and how the tax-payers' money is being spent.

Activities around the globe!

In 2005 around 45 civil society organizations in over 30 countries around the globe marked Right to Know Day with activities that included:

- (1) An all-day conference on current challenges to Freedom of Information.
- (2) Release of reports by NGOs on different aspects of open government including secrecy policies, transparency of political finance contributions, and results of monitoring studies.
- (3) Presentation of Awards
 - Awards for institution with the best system of providing information
 - Awards for best web site from the perspective of the access to information law
 - Awards for a media outlet making best use of information requests in preparation of its publications and/or broadcasts
 - Awards for best article/broadcast prepared on the basis of information

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- received using an FOI law.
- Awards for NGOs that have contributed most to the promotion and protection of the right to information.
- Awards for a citizen who had exercised his/her right of access to information for the benefit of the community.
- Negative awards for institutions not fulfilling their obligations under the FOI law.
- Negative awards for "the most ridiculous answer to an access to information request".
- (4) A public debate on openness between government officials and journalists/NGOs.
- (5) Selection and dissemination of interesting news stories over the past year that were based on information released under the FOI law.
- (6) Selection and dissemination of the most strange, stupid and/or funny responses to requests and refusals to provide information
- (7) Selection and dissemination of the most shining examples of attempts by public officials to help the public with their search for information.
- (8) Publication of a "Black Lists" of those public officials/institutions who impaired and infringed the right to access to information.
- (9) Publication of posters, banners, cards, brochures, and pamphlets with "Right to Know" slogans etc.

Source: Foia blog.

LAW alter views

MOBILE PHONE

Fraudulent use of roaming service

ABU HENA MOSTAFA KAMAL

THE mobile phone sector has been one of the fastest growing industries over the past decade. In 1980s when mobile phones were first introduced, no one ever imagined that it would be an essential merchandise for ever growing consumer class. Handiness, rapidly falling charges, availability of new services (such as pre-paid), innovative and robust technologies – all help this sector to grow phenomenally. Now in Bangladesh one of the leading phone company alone has 8.5 million subscribers. In 2005, it was estimated that 18 million subscribers used mobile phone in Bangladesh. The figures give an indication of the strength of the mobile sector. Shockingly, this ever growing telecom sector is losing approximately 55 billion dollars worldwide in a year as a result of fraudulent use of mobiles. This article will provide a general outline of mobile telecom fraud involving roaming and it will also briefly explain the complex legal question with regard to its transboundary nature.

There are various kinds of subscription schemes and also fraud involving mobile phone. Among them roaming fraud is severe in nature. Roaming fraud can not be committed in one single country as it involves two or more states' mobile network. As a result, roaming fraudsters are subject to various jurisdictions. In most cellular fraud cases, domestic law is enough to punish a fraudster but for roaming fraud, prevailing domestic laws do not provide appropriate remedies as it involves several territorial directives and complexities. Let us enlighten our esteemed readers with examples:

Mr. Aryaan is a subscriber of Delta Phone Company in Bangladesh. His mobile / SIM (roaming capable) was stolen in Delhi Airport and the fraudster used it to make several international calls in United Kingdom and United States before the number was temporarily disconnected. There is no doubt that the theft of mobile is committed in Delhi but where did the cellular fraud take place?

In this scenario, the fraudster made international calls from Indian territory but the billing took place in Bangladesh. We know that in criminal law, the misdemeanor must take place on national territory before the courts of that country can claim jurisdiction. But in this case multinational jurisdiction is vitally involved. This gives rise to few typical questions:

- Is the fraud committed in the country where the initial cellular subscription is taken out?
- Is it committed in the country roamed?
- Is it committed in countries where the fraudulent calls are actually made?

These issues of roaming fraud generate interesting questions for academic lawyers. The trans-border components of roaming make these issues particularly challenging for the legal profession. Furthermore, these issues clearly demonstrate how localisation of crime and the question of jurisdiction are interlinked.

Legal theorists tried to resolve this problem (involving jurisdiction) by providing different theories. Many believe that a cellular fraudster is only exposed to justice in the state where the initial cellular subscription is taken out. Because, the false representation is committed when:

- The cellular fraudster made the call by using a cloned set or stolen SIM. and
- When the subscriber is financially held liable for the call he never made (When the subscriber receives the bill from original mobile company). and
- There is an uninterrupted chain of causation between these two events. Sady, this theory has two loopholes. Such as:



[1] In international roaming system, the roaming users do not use their original cellular network for making calls rather they use another mobile company's (secondary cellular network situated in another country) service who has a contractual agreement with the original mobile service provider. So, the roaming user's original operator (here Delta Mobile, Bangladesh) has to pay to the operator of the roaming network (secondary cellular network provider in India) for the roaming user's use, whether or not the user pays his bills. So, the fraudster is not only deceiving the mobile user but simultaneously he is committing a fraud against the original mobile company and secondary cellular network provider. Thus, again two individual jurisdictions come into conflict and it becomes quite difficult to determine in which country the fraudster should be prosecuted. Therefore, a universal transnational treaty is highly required to solve this jurisdictional brainteaser.

[2] The problem regarding 'Jurisdiction' is further exacerbated by the lack of a harmonised set of territorial regulations at international level. For instance, if an American citizen fraudulently usurps another mobile user's right, and if that user is an inhabitant of Bangladesh or India and if the fraud is committed outside of USA, it will be awfully difficult for these third world countries to impose penalty on the wrongdoer. Because, America has exceedingly rigid foreign policy discouraging any trial of its citizens outside their jurisdiction. There is another problem that may

arise due to the lack of proper coordination of domestic laws. This kind of legal dilemma often paralyses cases and encourages the mischief-makers to commit more same type offences. As we know, domestic rules differ from State to State and differing national rules make deciding the relevant jurisdiction even more problematic.

For instance: Many nations of this world follow the civil law principle of UBIQUITY. It means a crime may be localised in any place where a substantial element of that crime took place. But the provision of the UK's Criminal Justice Act 1993 says that a crime will be localised in England and Wales where one of the ingredients of the offence occurs (in England or Wales) A lucid variance can be found between these two rules. If we follow the principle of UBIQUITY, then a 'substantial element' of cellular fraud is committed in Bangladesh during the time the billing of international calls was made for the original subscriber (according to the given scenario). And if we follow UK's regulations then 'the act of making a fraudulent call' constituted an 'ingredient' of a cellular fraud offence (fraud committed in India). So globally accepted transboundary regulations is necessary for synchronising different directives of different states to solve this kind of problem.

The author did his graduate and post graduate legal degrees from United Kingdom.

LAW watch

Belarus: Peaceful intentions under fire



Another four people in Belarus have been sentenced for the peaceful exercise of their human rights. Amnesty International considers them prisoners of conscience and calls for their immediate and unconditional release.

Mikalay Astreyka, Enira Branizkaya, Alyaksandr Shalayka and Tsimafey Dranchuk, all of them in their twenties, are members of an independent election monitoring group, Initiative Partnership. They were sentenced on 4 August to between six months and two years' imprisonment for their intention to observe the presidential elections in March 2006. "These four young people have been sentenced for the legitimate exercise of their right to freedom of association," said Heather McGill, Amnesty

International's researcher on Belarus.

Diplomatic representatives who observed the trial have condemned the sentences. The Chairman-In-Office of the Organization for Security and Cooperation in Europe, Karel De Gucht, expressed concern at the application of the criminal code in "a case linked to peaceful intentions to observe the presidential elections".

Amnesty International has repeatedly expressed concern about harassment, the intimidation of civil society activists, and the curtailment of the right to assembly and association. All civil society organizations face a difficult and expensive registration procedure and are often refused permission to register. Once they succeed in

registering they face stringent controls and restrictions on their activities.

In December 2005, the Belarusian parliament passed a number of changes to the criminal code and the code of criminal procedure that enabled the authorities to further curtail the activities of civil society. In particular changes to Article 193 of the criminal code under which Mikalay Astreyka, Enira Branizkaya, Alyaksandr Shalayka, and Tsimafey Dranchuk have been sentenced makes it a criminal offence to act under the name of an unregistered organization. Background Mikalay Astreyka, Enira Branizkaya, Alyaksandr Shalayka, and Tsimafey Dranchuk were preparing to carry out independent monitoring of the presidential elections that were held on 19 March 2006 when they were arrested at their offices on 21 February 2006 by KGB officers. The KGB initially claimed that they were organizing fraudulent exit polls and planning a violent uprising after the election. They were formally charged on 3 March under Article 193 Part 2 of the Criminal Code for "organizing and running an unregistered organization that infringes the rights of citizens". Initiative Partnership carried out independent monitoring of the parliamentary elections in 2004 and had attempted to register, but had been refused twice.

Source: Amnesty international.

RIGHTS monitor

Congo rebel charged with war crimes by ICC

Prosecutors formally charged a Congolese militia leader with enlisting children as young as 10 and forcing them to fight in the country's civil war in the first case at the International Criminal Court. Thomas Lubanga, who was delivered to the court from the Democratic Republic of Congo (DRC) in March, was the founder and leader of one of the most dangerous militia in Congo's lawless northeastern district of Ituri, according to prosecutors. "Lubanga... controlled and executed a deliberate plan to enlist and conscript children systematically and in large numbers, including children under the age of 15, even as young as 10," the International Criminal Court's (ICC) deputy prosecutor Fatou Bensouda told a news briefing.

The charges against Lubanga, leader of the Union of Congolese Patriots (UPC), an ethnic militia now registered as a political party, relate to the period between July 2002 and December 2003, although the war in the Congo began in 1998. The Court will examine the prosecutors' evidence, based on the cases of a representative six child soldiers, in September to decide whether it is sufficient for the trial to go ahead. Up to 30,000 children were associated with the DRC's armed groups during the height of the war, according to estimates. "The conscription, enlistment and active use of children in armed conflict represents one of the most brutal and morally troubling legacies of war..." Bensouda said.



The prosecutors' indictment details how the children, who often joined the militia because of their desperate need for food or desire to avenge their murdered families, were subject to systematic military training and severe discipline. Commanders urged them to kill members of the Lendu ethnic group in Ituri without instructing them to differentiate between soldiers and civilians, prosecutors said. Bensouda said the trial would focus on the charges relating to child soldiers but Human Rights Watch (HRW) said in a statement to the court last month such charges did not go far enough, stressing Lubanga's UPC was responsible for much more. "We believe that you, as the prosecutor, must send a clear

signal to the victims in Ituri and the people of the DRC that those who perpetrate crimes such as rape, torture and summary executions will be held to account," HRW said. The controversial ICC was set up as the first permanent global war crimes court to try individuals and it issued its first warrants last year for five leaders of Uganda's Lord's Resistance Army (LRA). Ituri has been a bloody corner of Congo where ethnic violence between the Hema and Lendu and clashes between militia groups vying for control of mines and taxation have killed 60,000 people since 1999.

Source: Reuters

LAW week



Caretaker govt to act against agitation

Prime Minister Khaleda Zia has said the caretaker government will be forced to take tough action if any party tries to launch agitation or create chaos during the interim period. Addressing a public meeting at Barura College ground, she criticised the opposition for its plan to stage agitation against the next caretaker government. "Caretaker government is a constitutional government... It will be compelled to take stern action against any agitation or indiscipline," said Khaleda, also the chairperson of the BNP.

In response to the opposition leader's call for people to come to Dhaka wielding stick and oar against the caretaker government, Khaleda said, "At that time we will not be in the government, but we will remain in the country... we want peace and we will not remain silent." She said those who want to foil the elections will be identified as the enemies of the country and democracy. The prime minister reiterated that the next elections would be held in time in accordance with the constitution and people are ready to take part in it. She reminded that the provision of a nonparty caretaker government has been incorporated in the constitution according to the opposition's demand, as they did not want elections under a party government. "Now the opposition neither accepts elections under a caretaker government nor a party government," Khaleda said, adding that people will thwart any move to create constitutional vacuum through chaos and indiscipline. The BNP chief said the late president Ziaur Rahman had restored democracy and her government restored parliamentary democracy that would be continuing in the country. --Unb, Comilla, September 24.

Vat on sim card

SC rejects NBR plea for stay

The Supreme Court turned down the National Board of Revenue (NBR) plea for staying an HC judgment declaring "illegal" the NBR-imposed supplementary duty and VAT on mobile phone SIM card. Passing the order, vacation chamber court of Justice MM Ruhul Amin asked the revenue board to maintain status quo. The court fixed October 17 for hearing the leave-to-appeal application against the High Court verdict at a regular bench of the Supreme Court. On August 24, the High Court, in response to a public interest litigation (PIL) writ petition, declared illegal the supplementary duty and VAT amounting to Tk 1,628 on each mobile SIM (subscriber identification module) card imposed last year. In June last year, Abu Sayeed Khan, a freelance journalist, had filed the writ petition challenging the legality of government order imposing the duty and VAT. Advocate M Asaduzzaman, barrister Syed Afzal Hassan Uddin and barrister Anita Rahman stood for the PIL writ petition. Barrister TH Khan was the counsel for NBR. --Unb, Dhaka, September 25.

JMB leaders may not be executed in govt tenure

An uncertainty suddenly raised its head regarding the executions of seven condemned militants of Jamaat-ul Mujahideen Bangladesh, as the government said it has no intention of executing them before Eid-ul-Fitr even if they do not appeal within seven days of signing of the death warrants. Law Minister Barrister Moudud Ahmed said that the government does not want to execute anyone during Ramadan. Whether the executions can be carried out before the present government hands over power on October 28 has also become a topic of discussion as many are inquiring whether the government is going to shift from its previous position of favouring executions of the condemned Islamist militants before it hands over power to a caretaker government. Asked whether the executions can be carried out before the present government's tenure ends, Moudud did not reply directly but told reporters, "I'll discuss the matter with the home ministry." Iftekhar Al Mamun, one of the condemned seven, already appealed against his death sentence, the inspector general of prisons told The Daily Star. Another one of them is on the run. Family sources said two other condemned – Khaled Saifullah and Abdul Awal are also preparing to appeal. Meantime, Rafiqul Islam, brother of condemned Bangla Bhai, told reporters that a relative of them will appeal against Bangla Bhai's death sentence maintaining legal process. --The Daily Star, September 26.

JS passes labour bill amid AL walkout

The parliament passed Bangladesh Labour Bill 2006 amid strong protest from the main opposition Awami League (AL) followed by an AL walkout led by its leader Sheikh Hasina. The main opposition walked out of the House protesting a parliamentary standing committee report on the bill which did not include a note of dissent of an AL lawmaker and failed to mention a subsequent walkout of the dissenting member of the committee from a meeting. Abdul Kader Siddiqui of Krishok Sramik Janata League also walked out of the House protesting the speaker's attitude. "The record of the note of dissent and the walkout of a member of the standing committee from the meeting must be included in the committee report and we will walk out of the House in protest if you don't include that before passing the bill," Kader Siddiqui told the speaker in the House. Later, the parliament passed the bill without the presence of the main opposition. State Minister for Labour and Employment Aman Ullah Aman placed the bill. The parliament also passed a bill for establishing Asian University for Women in Chittagong, in absence of the main opposition. Denying the allegations brought by the opposition, Speaker Jamir Uddin Sircar told the House that he did not get any written note of dissent. He however said, "If the opposition member had submitted his written note of dissent then it would be included in the committee report." Criticising the bill, Leader of the Opposition in Parliament Sheikh Hasina told reporters after the walkout, "The government violated the ILO convention in preparing the bill which is absolutely contrary to the labour's interest." --The Daily Star, September 26.

Cases against cops

Court orders judicial enquiry

A Dhaka court ordered judicial inquiry after two Jubo Mahila League leaders filed separate criminal cases against the inspector general of police (IGP) and some 715 police personnel for attacking the opposition activists during their Prime Minister's Office siege programme on September 12. Jubo Mahila League President Nazma Akhter and its General Secretary Professor Apu Ukil filed the cases with the Chief Metropolitan Magistrate's Court against the accused for their alleged involvement in the attacks. Taking the complainants into cognizance, Metropolitan Magistrate Syed Mohammad Mojibul Haq ordered the judicial probe into the matters. The accused include IGP Anwarul Iqbal, Deputy Director of Rapid Action Battalion (Rab) Abdul Aziz Sarker, Dhaka Metropolitan Police (DMP) Commissioner SM Mizanur Rahman and Deputy Commissioner (DC) of Tejgaon Kohinur Miah. The other accused are five additional IGs of different departments, two DIGs, six DCs, 11 ADCs, 33 ACs, 17 officers-in-charge (OCs) of different police stations, 12 inspectors, 20 sub-inspectors (SIs) and six hundred police members of different status. A team of police led by DC Aurangzeb Mahub attacked a Jubo Mahila League procession at the Bangla Motor Crossing and its neighbourhood from 1:00pm to 2:00pm on September 12, Nazma Akhter said in her complaint. The accused mercilessly beat up Jubo Mahila League leader Ayesha Khanam Asha and tore her clothes, Nazma Akhter added. They also attacked processions that left Awami League (AL) lawmaker Asaduzzaman Noor, the complainant and a large number of leaders and activists injured. --Prothom Alo, September 26.

Corresponding with the Law Desk

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