

OCTOPUS Interface Conference: Cooperation against Cybercrime 2008 (Strasbourg, 2008)

Dr. Nora Alicia Chernavsky¹

I – Legislative Advances

The Chamber of Deputies of the Argentine Republic passed a Bill punishing cybercrimes in October 2006. This Bill was modified and afterwards passed by the Senate in November 2007 and sent back to the Chamber of Deputies, where it is now awaiting its final approval to be enacted.

This Bill is in line with the Convention's main criminal dispositions. On the other hand, this Bill solves a legal vacuum in this matter, including the circulation of illicit contents through the Internet such as child pornography.

Violations of privacy, the illegal appropriation of information and hacking are also penalized. Computer fraud and damage are contemplated as well in this legislation.

Concerning procedural law aspects of the Convention, profound reforms would be necessary, especially with respect to requests of data preservation and assistance in the case of spontaneous information (Article 26, Title 3 - General principles relating to mutual assistance).

II – Information Safety in the Public Sector

Argentina has also made advances in information protection measures and computer incident response through ArCERT (a team that coordinates the response to emergencies in information networks of Argentina's public sector). As other entities with similar goals, ArCERT main task is to strengthen the level of information security in the public sector and to provide technical training to the systems' users. For more information, you may refer to its web site, www.arcert.gov.ar.

III – Comments relating to the compatibility between Argentina's legislation and the Budapest Convention on Cybercrime

A group of experts from Argentina's Public and Private Sector and the Academy, is currently reviewing and analyzing the compatibility between Argentina's bill on cybercrime and the Convention with respect to its four sections: legal figures, procedural law, jurisdiction and international cooperation.

Although work is still in progress, up to now, it can be stated that there are no internal criminal law obstacles for Argentina to sign the Convention, except in the case of Article 6 concerning the misuse of devices, especially in the case of the simple possession of such items. Argentina's internal discussion on this point concerns the kind of reservations that would be necessary to make this behavior compatible with constitutional principles (legality principle).

Also, an objection has been raised in the case of Article 9, Item 2, point c, concerning realistic images representing a minor engaged in sexually explicit conduct. Argentina's internal law punishes this offense when the image represents an actual minor, not just a realistic image.

In relation to jurisdiction matters, Article 22. item 1, point d of the Convention on Cybercrime (Chapter II, Section 3) introducing the principle of the offender's nationality is not compatible with Argentina's principle of territoriality.

In connection to international cooperation, the group of experts is currently studying whether the terms of the Convention are compatible with other multilateral treaties already signed by Argentina.

Other issues are still under review.

¹ Argentina's Focal Point in Cybercrime before OAS and other International Organizations
Senior Advisor, Undersecretariat of Criminal Policy, Ministry of Justice, Security and Human Rights, Sarmiento 329, 4° piso, (1041) Buenos Aires, Argentina – Email: nchernavsky@jus.gov.ar, noracher@hotmail.com