



**CASE 2: COMPUTER-RELATED CRIME?**

The District Court Amsterdam (the EAW Judicial Authority for the Netherlands) has received a European arrest warrant, issued in the United Kingdom, concerning Y, of Danish nationality, living in Amsterdam. The model form contains the following information:

- (a) Information regarding the identity of Y.
- (b) This European arrest warrant is based on an arrest warrant concerning Y, lawfully issued by (identity of authority mentioned)
- (c) -
- (d) -
- (e) This warrant relates to in total 24 offences.

*Description of the circumstances in which the offence was committed:*

Y is accused of having run a website offering obscene video clips to be made available after payment. On different dates (mentioned), 24 British customers, all adults, have, in the territory of the United Kingdom, inter alia London, downloaded obscene video clips from the website of Y, who had, after having from each customer received the agreed price on his Dutch bank account, for each customer made possible the downloading by informing those customers of an access password.

*Nature and legal classification of the offence and applicable statutory provision:*

Having sold or offered for sale an obscene article, namely a video clip showing (...), contrary to section 2-(1) of the Obscene Publications Act 1959.

*Ticked as an offence punishable in the issuing Member State by a custodial sentence or detention order of a minimum of at least three years as defined by the laws of the issuing Member State:*

computer-related crime

- (f) Statutory time limitations are respected.
- (g) No seizure of property is requested.
- (h) -
- (i) *identity and contact details of issuing judicial authority:*  
(...).



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Additional information for the workshop:

The Netherlands have made a declaration that European arrest warrants are admissible if put in the Dutch or in the English language.

The Dutch Implementation Act (*Overleveringswet*) contains the Dutch language version of the list of 32 categories of offences. The relevant category is labelled: *informaticacriminaliteit*

The Dutch legislature has made the optional requirement of Art. 2-(4) EAW-FD into a mandatory requirement: regarding non list offences, dual incrimination is required. The optional exception of Art. 4-(7)-(a) EAW-FD has in the *Overleveringswet* been left to the discretion (if reasonable) of the Amsterdam District Attorney.

The Council Framework Decision on attacks against information systems (24 February 2005)<sup>1</sup> obliges Member States to make punishable the illegal access to an information system, illegal interference with the functioning of such a system, and illegal interference with computer data on such a system.

The Convention on Cybercrime (Budapest, 23 November 2001) obliges states not only to make punishable acts that have computers and computer data as their object, but also the use of computer systems for the production or possession of child pornography, and the infringement of a copyright by means of a computer system.

The Cybercrime Convention (2001) had at the moment of the receipt of the European arrest warrant neither been implemented by the United Kingdom nor by the Netherlands.

Providing pornographic materials to someone on his request is not punishable under Dutch law (unless it concerns child-pornography, or the customer is below 16 years of age).

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<sup>1</sup> Official Journal L 69, of 16 March 2005, p. 67.