ECommerce

Computer Science Tripos Part II

International Perspectives on Internet Legislation

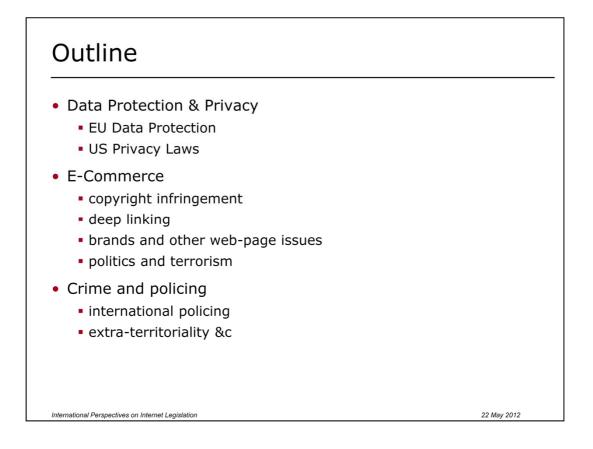
Easter Term 2012

Richard Clayton

These lecture notes were specially prepared for the Cambridge University Computer Science "ECommerce" course, Easter Term 2012.

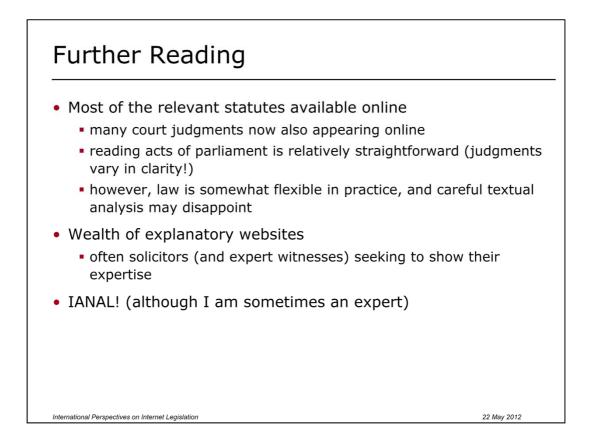
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The slides give the broad outline of the lectures and the notes ensure that the details are properly recorded, lest they be skipped over on the day. However, it is at least arguable that it will be far more interesting to take notice of what I say off-the-cuff rather than relying on this document as an accurate rendition of what the lecture was really about!

Also, please note that "IANAL" (I am not a lawyer). Consult a professional if you wish to receive accurate advice about the law!

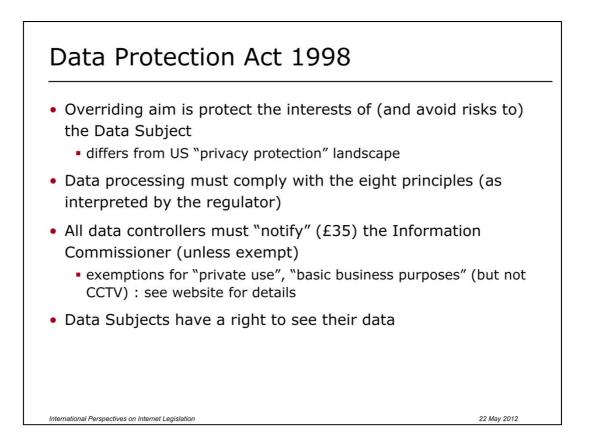


The text of all relevant UK statutes are published at:

http://www.legislation.gov.uk

On the website you will find most statutes – starting with five that predate Magna Carta – with complete coverage from 1988 onwards. Consolidated versions of statutes (albeit with some complex exceptions and limited application of the most recent changes) are also available, along with an indication as to which sections are currently in force.

The site also holds the text of statutory instruments, with partial coverage from 1948 and a complete set from 1987.



* The Data Protection Act 1998 is now fully in force. The text of the Act is online at http://www.legislation.gov.uk/ukpga/1998/29/contents and there is a wealth of advice on the Information Commissioner's site at:

http://www.ico.gov.uk/

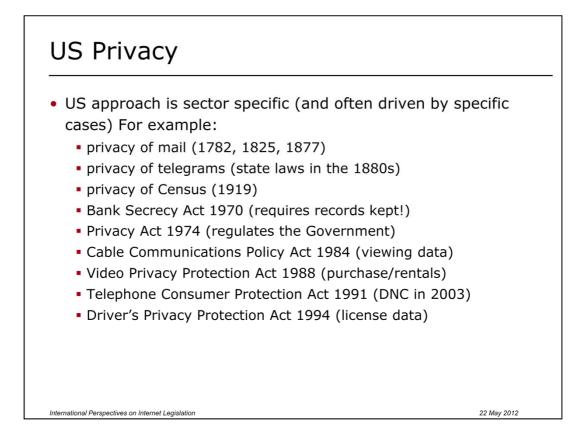
* Anyone processing personal data must comply with the eight enforceable principles of good practice. They say that data must be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with the data subject's rights;
- secure;
- not transferred to countries without adequate protection.

Personal data covers both facts and opinions about the individual. It also includes information regarding the intentions of the data controller towards the individual, although in some limited circumstances exemptions will apply. With processing, the definition is far wider than in the 1984 Act. For example, it incorporates the concepts of 'obtaining', holding' and 'disclosing'.

★ Exemptions from notification are complex – see the website for details

* Data Subjects may be charged (but not more than £10) for access to data. Many organisations will incur costs that are far higher than this.



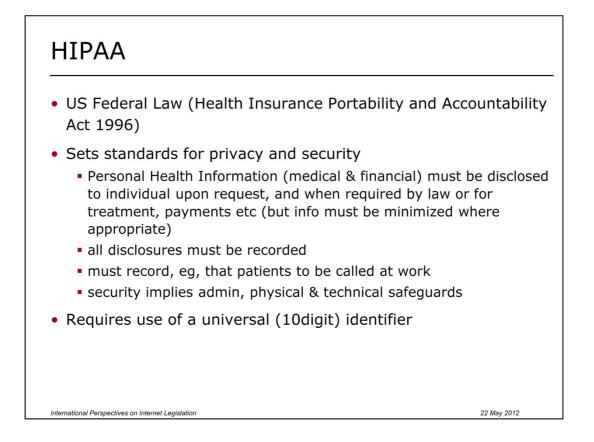
★ The US does not have the same idea of Data Protection as does Europe, but it does have a formal notion of privacy, and a patchwork of Acts addressing disclosure of personal information in specific sectors.

★ The Privacy Act applies many of the Data Protection principles to the Federal Government (but not to private industry, and there are significant exceptions).

★ The Video Privacy Protection Act was passed following Judge Robert Bork's video rental records being released when he was being considered for appointment to the Supreme Court.

★ There is an overview of all the various statutes at:

http://www.cdt.org/privacy/guide/protect/laws.php

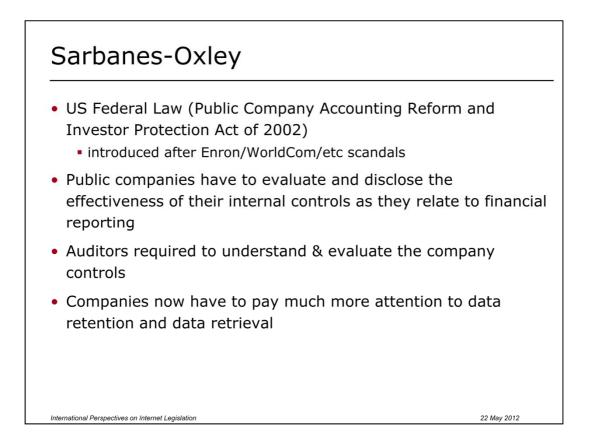


★ At the heart of HIPAA is a "Privacy Rule" that it takes a 25 page PDF to summarise!

http://www.hhs.gov/ocr/privacy/hipaa/understanding/ summary/privacysummary.pdf

★ The official site explaining HIPAA is at:

http://www.hhs.gov/ocr/privacy/hipaa/understanding/ind
ex.html



★ Sarbanes Oxley (SOX) is a complex collection of provisions, that are intended to restore confidence in corporate America following some very high profile scandals that cost investors billions.

★ Drawing on analysis on why those scandals occurred, there are now specific rules about conflict of interest for auditors and security analysts.

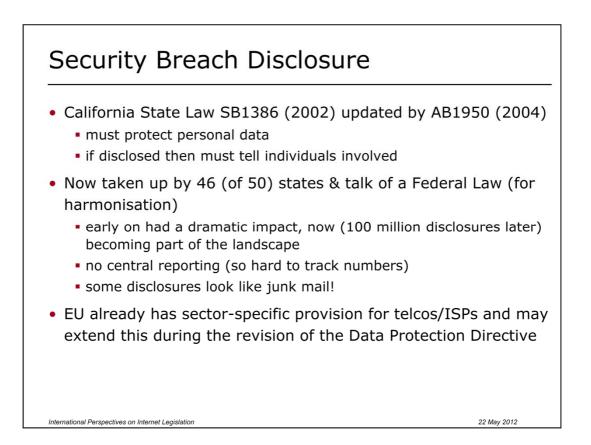
★ Senior executives in public corporations must take individual responsibility for the accuracy and completeness of financial reports and they have new requirements to report personal stock transactions.

* The requirements on effective internal controls have been implemented through the Public Company Accounting Oversight Board (PCAOB), and in essence through the major accounting firms. Where existing accounting systems were chaotic, manual or decentralised, costs have been high, which has led to considerable criticism.

* There is some evidence of smaller firms avoiding stock market listings in New York to reduce their costs, and the SOX regime is regularly being tinkered with to try and avoid excess expense.

\star For the text of the law see:

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http://www.gpo.gov/fdsys/pkg/
PLAW-107publ204/content-detail.html
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★ For a list of all the various state laws (there is similar language in all of them, but all sorts of complex differences) see the NCSL website:

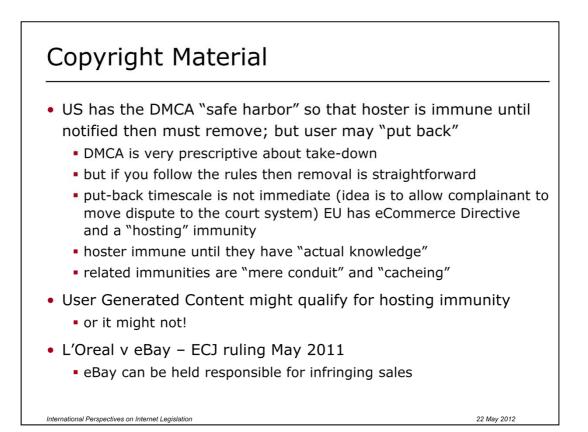
http://www.ncsl.org/issues-research/telecom/ security-breach-notification-laws.aspx

★ The EU included a security breach disclosure requirement in the reworking of the Telecoms Directives. It applies to telcos and ISPs (but NOT to "information service providers") where there is a security breach affecting information held for "the provision of electronic communication services".

★ For the UK transposition of the new regime see "The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011", SI 2011/1208:

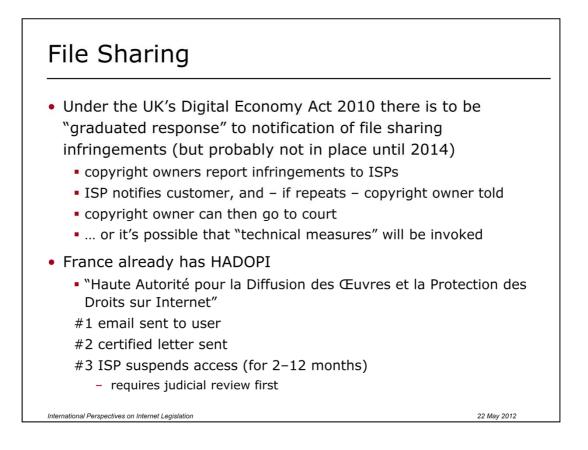
http://www.legislation.gov.uk/uksi/2011/1208/made

Note that if you lose personal data you have to tell your national authority (in the UK the ICO). If you think it adversely affects the personal data or privacy of a user of subscriber then you must tell them. If you don't the regulator can force you to do so. Note that you have to report a breach even if the data was encrypted and hence there wasn't really a breach at all !

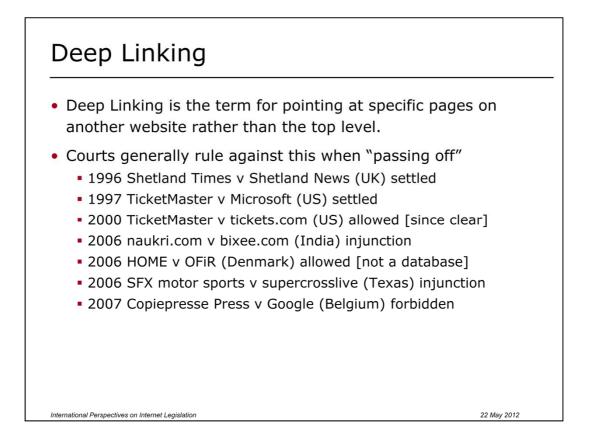


★ The Digital Millennium Copyright Act (1998) criminalises production or shipping of digital rights management (DRM) circumvention devices. It also sets up a scheme for dealing with copyright infringement on the Internet. ISPs are immune until notified, via a specific address that they must publish, and then they must remove infringing material. When there is a dispute the poster can have the material replaced, but must submit to the jurisdiction of a court who will decide the case. Note that infringement notices must meet specific requirements and be made "under penalty of perjury".

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http://frwebgate.access.gpo.gov/cgi-bin/
    getdoc.cgi?dbname=105_cong_public_laws
    &docid=f:publ304.105.pdf
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★ In the UK, Parliament passed the Digital Economy Act (in rather a hurry) in April 2010. Where there is infringement via file sharing the rights owners will be able to require ISPs to communicate with their customers to tell them of their wrongdoing. The ISP must reveal the existence of persistent offenders, and the rights holders can then apply to the court for an order to have their names and addresses revealed. This is sometimes called "graduated response" or "three strikes". Much of the detail will be set out in secondary legislation that will be appearing over the next year or so.



***** Shetland News had headlines that pointed to stories within Shetland Times site. There was an interim injunction forbidding this (because the headlines were copied verbatim), but it settled before trial with the News agreeing to cease their previous practice.

 $\verb+http://www.netlitigation.com/netlitigation/cases/shetland.htm$

★ Microsoft's "Sidewalk" site linked direct to events on Ticketmaster's site. They settled out of court and the deep links were removed.

http://www2.selu.edu/Academics/FacultyExcellence/Pattie/DeepLinking/cases.html

★ Tickets.com were linking into TicketMaster when they didn't handle an event, and the judge said it wasn't a copyright breach because there was no copying.

http://www.politechbot.com/docs/ticketmaster-tickets-2000-03-27.txt

★ The aggregator naukri was enjoined from linking deep into the naukri jobs site (they were essentially presenting classified of their own).

http://dqindia.ciol.com/content/industrymarket/focus/2006/106032304.asp

★ Real estate site bolig.ofir.dk was linking into a database of houses for sale at Home. The court overturned a previous DK ruling saying that search engines by "ordinary practice" provided deep links into websites.

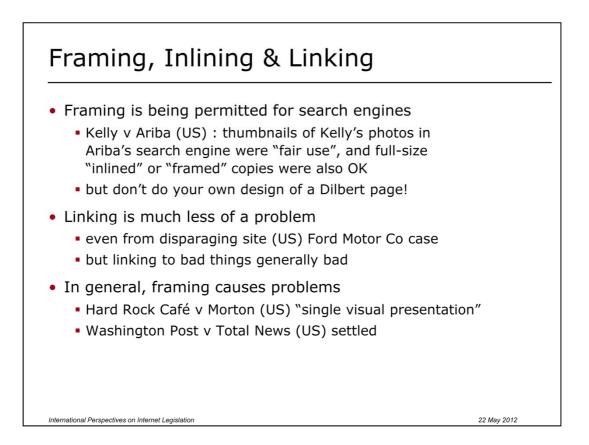
http://www.edri.org/edrigram/number4.5/deeplinking

★ Supercrosslive linked to a live audio webcast at SFX. This was seen as copyright infringement. Worth noting that supercrosslive was a litigant in person.

http://cyberlaw.stanford.edu/packet/200702/providing-unauthorized-link-liveaudio-webcast-likely-constitutes-copy

★ The Belgian newspapers objected to Google News who provided headlines and small snippets of their stories.

http://www.webpronews.com/topnews/2007/02/14/ google-to-appeal-copiepresse-decision



★ Kelly was a photographer whose site was indexed by Ariba (an early image search engine). The court held that the thumbnails were allowed under US copyright law's "Fair Use" provisions. The appeal court initially held that when they framed images that were clicked on then this infringed, but revised their opinion and later said that was OK as well.

http://www.eff.org/cases/kelly-v-arriba-soft

★ United Media get upset if you create your own page (with a better layout) and incorporate Dilbert strips within that.

http://www.cs.rice.edu/~dwallach/dilbert/

★ Ford failed to get an injunction to prohibit a link from the disparaging website "fuckgeneralmotors.com"

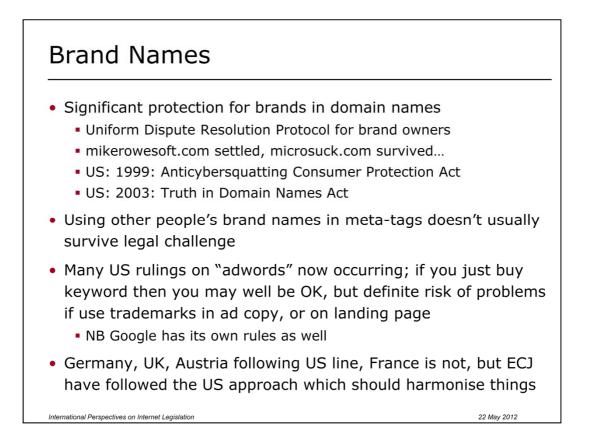
http://www.2600.com/news/122201-files/ford-dec.html

★ Morton sold his interest in the Hard Rock Café, except for the Hard Rock Casinos and Hotel. However, he also built a website that sold Hard Rock items, and that sold CDs via a framed copy of the Tunes website. The court held that since it looked like a Hard Rock Hotel site, and since selling CDs was a right Morton had sold, he was in breach of agreements.

http://www.internetlibrary.com/cases/lib_case192.cfm

★ Total News linked to various news websites, presenting their content within a frame (full of their logo and their adverts). They settled out of court with the media companies – with Total News getting a license to link to the sites, but without a frame. Since settled, this doesn't settle anything!

http://legal.web.aol.com/decisions/dlip/wash.html



* Most top level domains provide a dispute resolution protocol for settling domain name disputes, in particular the ICANN sponsored names have a uniform system: http://www.icann.org/en/udrp.htm

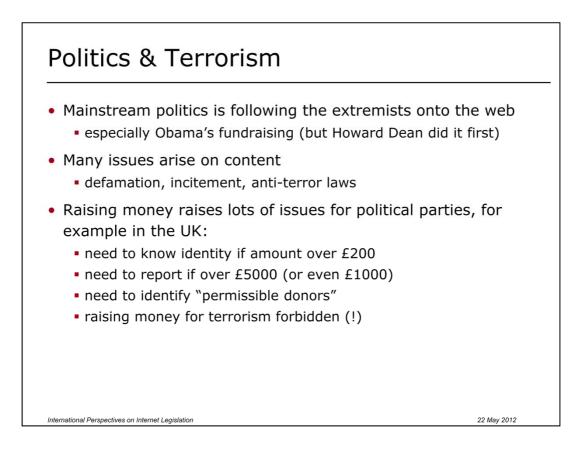
Trademark owners have little choice but to defend their IP, which put them in an awkward situation when a 17-year-old uses their real name:

http://ensign.ftlcomm.com/ensign2/mcintyre/pickofday/2004/january/jan019_04/mikerowesoft.html

★ The US has specific legislation on Cybersquatting (in the UK the "One in a Million" judgment has been sufficient) and the US also criminalises "misleading" domain names for "porn" websites.

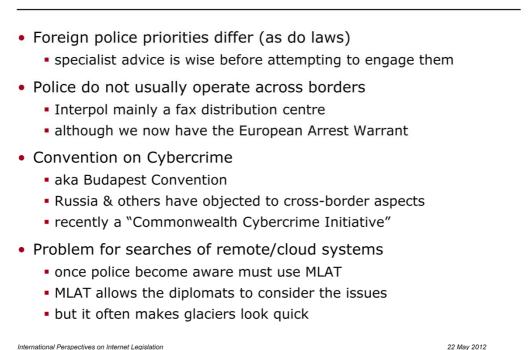
★ Rescuecom Corporation v. Google, Inc. settled US issue of "use of trademarks", but to a problem it needs to be used "in commerce" to be a problem and create "consumer confusion". I, ECJ ruling in March 2010 found similar position, and gave substantial immunity to Google, albeit rather less to the advertiser. For a extended discussion of the current situation and some worked examples:

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http://www.floridalawyer.com/press/2010/12/
google%E2%80%99s-adword-policies-and-
trademark-law-across-international-boundaries/
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 For information about fund-raising for UK political parties see: http://www.electoralcommission.org.uk/party-finance

International Policing



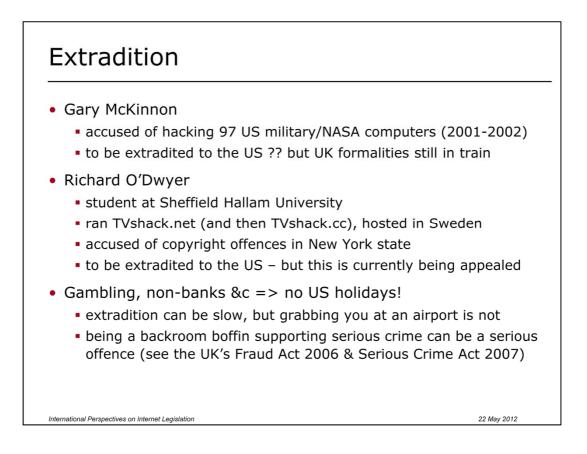
★ There are attempts to harmonise cyber legislation, such as the 2001 Convention on Cybercrime

http://conventions.coe.int/treaty/en/treaties/html/185.htm

This also sets out a framework for cooperation with 24x7 contact points, but it does not provide any mechanisms for aligning strategic objectives, let alone allowing police to operate across jurisdictional borders.

★ The Commonwealth initiative:

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http://www.commonwealthigf.org/wp-content/uploads/
2011/10/Commonwealth-Cybercrime-Initiative-Version-11.1.pdf
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★ Gary McKinnon

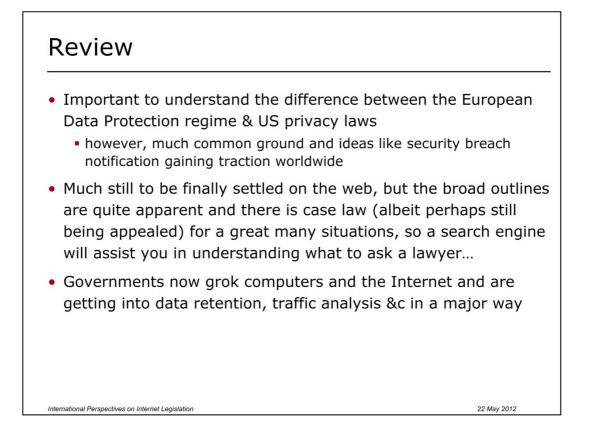
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http://spectrum.ieee.org/geek-life/
profiles/the-autistic-hacker/
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✤ Richard O'Dwyer

http://www.bbc.co.uk/news/
 uk-england-south-yorkshire-17472142

★ David Carruthers was arrested at Dallas Fort Worth airport whilst changing planes on a flight from the UK to Costa Rica. He was CEO of an online gambling firm (illegal in the US) and after several years of house arrest was sentenced to 33 months in January 2010.

http://news.bbc.co.uk/1/hi/business/5204176.stm
http://www.telegraph.co.uk/finance/newsbysector/
 retailandconsumer/6963081/
 Betting-executive-jailed-for-racketeering.html



Ignorance of the law excuses no man; not that all men know the law; but because 'tis an excuse every man will plead, and no man can tell how to confute him.

John Selden (1584-1654)

International Perspectives on Internet Legislation

22 May 2012