Identity theft in South Africa

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Privacy and E-commerce

A. Identity theft
Definition, forms and methods

B. Legal regulation
Common law, legislation, prosecution

C. Evaluation
Definition

- All types of crime in which someone wrongfully obtains and uses another person’s personal data in some way that involves fraud or deception, typically for economic gain

- The unauthorised use of personal information to commit fraud or theft
Methods

- Phishing
- Spyware
- Bin-raiding
- Telephone calls
- Hacking
- Looking over shoulders
- Camera phones
Everyone has the right to privacy, which includes the right not to have –
(a) their person or home searched;
(b) their property searched;
(c) their possessions seized; or
(d) the privacy of their communications infringed.

Mistry v Interim Medical and Dental Council of South Africa and others 1998
Other legislation

- ID theft legislation
- Privacy legislation
- s86 Electronic Communications & Transactions Act
  1. Interception of data
  2. Modification or destruction of data
  3. Making or dealing in devices or programs that compromise data security
- s88 Promotion of Access to Information Act: Correction of personal data
Common law: theft

Unlawful appropriation of another’s moveable corporeal property with the intention to permanently deprive them of the benefits of their ownership rights.

✓ credit: X deposits money into Y bank and becomes Y’s creditor.

✓ electronic data and money: S v Harper 1981 (shares), R v Sibiya 1955; economic impact

? passwords, credit card info

? Identity: all economically relevant information
Common Law: Fraud

Unlawful and intentional misrepresentation that causes actual prejudice or is potentially prejudicial to another.

ABSA hacker who used spy-ware to steal log in information is charged with fraud and theft.

Hacker misrepresents that he is authorized to withdraw money.
Initiatives

- National directorate of public prosecutions cyber-forensic unit
- ECTA: cyber inspectorate
- Credit bureaux: consumers’ unlimited access to credit records
- Banks: real time sms alerts on account activity, unique number for internet transactions
Evaluation

- Common law not clear and has not yet been successfully used against ID theft perpetrator
- Statutory law also inadequate
- Special units have not yet been seen in action
Reform

- Specific legislation
- Training of justice personnel and police
- Public education