

МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ  
КРЕМЕНЧУЦЬКИЙ НАЦІОНАЛЬНИЙ УНІВЕРСИТЕТ  
ІМЕНІ МИХАЙЛА ОСТРОГРАДСЬКОГО

**ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ  
ПРОБЛЕМИ РЕАЛІЗАЦІЇ  
НОРМ ПРАВА**

матеріали III-ї Всеукраїнської науково-практичної  
конференції (з міжнародною участю)

Кременчук – 2015

## **PHISHING AS A NEW INFORMATION THREAT: A CRIME OR MISCHIEF?**

**Bailov Anton** –  
professor of Criminal Law and Criminology Chair of the Faculty of  
training specialists for investigative units, Ph.D., assistant professor  
(Kharkiv National University of Internal Affairs, Ukraine);

**Pinkerton Ron** –  
sergent of police, the head of training center of Houston Police  
Academy, Texas, USA;

**Osyatinskiy Stanislav** –  
head of International Department  
(Kharkiv National University of Internal Affairs, Ukraine)

*«Money – is common possessions. Everyone is allowed  
to take as much as he wants, – in case he can this»*

**Wihelm Schwebel**

The development of new technologies has led to the situation that those willing to obtain «easy profit» reached to the virtual world, which, as it turned out, promotes the spread of criminal offences among the population. The most popular weapon of Internet criminals – is phishing. This type of fraud is not new, but effective. What is the essence of this campaign?

Phishing (derived from the English word fishing) – is a relatively new type of fraud, which aims at cajolement of personal data about customers of online auctions, services in transferring or exchanging currency, online stores, etc. from gullible or inattentive Web users. Internet swindlers using different methods force the users to report personally confidential data (for example, by sending e-mails with propositions to confirm registration of the account, containing the links to a Web site, which design completely copies the design of well-known resources) [1, p. 229]. That is gullible users without any suspicions personally provide possibility for criminals to seize their property.

Despite the fact that crimes using the Internet are committed dozens of times per day, there are several cases of real punishment of swindlers per year. Therefore, the idea of increasing the penalties for phishing is fully justified. For example, it is possible to get up to 60 and 80 years of imprisonment in the US for financial crimes that affect the economy. Cybercrime, of course, affects the economy of Ukraine. There is a huge number of cases, when companies lost their business by bankruptcy because of the Internet fraud.

Nowadays law enforcement practice in the fight against cybercrime is not unambiguous. Foreign experience demonstrates that the facts of committing information crimes occur, but in terms of legal regulation there is, unfortunately, no any method and procedure of combating such manifestations. These facts are confirmed by specific life cases. For example, Valdyr Paulo de Almeida was arrested in Brazil. He is the chief of a major criminal, phishing gangs that within two years seized 37 millions of US dollars by the fraud of Internet users [2].

In the United States senator Patrick Leahy has presented to the Congress a draft of anti-phishing law on March 1, 2005. This bill provides that the criminals who create fake Web sites and send out fake e-mails shall be punished by a fine of 250 000 dollars and imprisonment for up to five years [3]. In the UK, the Law “On fraud” was adopted in 2006 [4]. This Law prohibits the possession or development of phishing tools for fraud [5].

Russian MP of the State Duma and the member of the Committee on Security and Combating Corruption of Russian lower house Illia Kostunov is developing a bill, which provides penalties for creation of phishing Web sites. The MP stresses that the possibility of pre-trial block of such resources should be consolidated by the law, and to determine the norms of criminal liability for the creation and possession of phishing Web sites.

In Ukraine, within the Explanatory note to the draft of the Law on amendments to the Criminal Code of Ukraine (concerning the strengthening of liability for illegal circulation of the means of payment) No. 1272 dated from December 5, 2014 it is noted that the legislations of the member states of the European Union define punishment for this kind of crime and it can not be less than one year of imprisonment that is provided by the requirements of the «Framework Decision of the Council of the European Union to combat illegal trafficking and counterfeiting the means of payment» dated from May 28, 2001 [6]. It follows that dealing with Internet fraud provides a different type and degree of liability in various countries. Regulatory acts governing the particular type of liability are also relatively different and may have no direct reference to phishing (or other “new” terms such as pharming, vishing, etc.), but while interpreting any legal norm it becomes obvious that it is the disposition of the articles that provides this act.

That is the reason we need to work seriously on the legislative base that does not keep up with the pace of cybercrime. International law requires synchronization. Besides, it is necessary to train (educate) professionals – investigators and judges to specifics of cybercrime. This is a very specific sector that requires the possession of special knowledge. Cybercrime – is one of the most complex negative

phenomena, which requires deeper, more integrated, comprehensive study for ensuring effective combating Internet fraud.

### REFERENCES:

1. V. P. Sabadash, Phishing as the Most Developed Type of Fraud in the Internet // Bulletin of Kherson Institute of the Regional Management and Law: University Research Notes. – 2006. – No. 1 (17). – P. 228-233.
2. Leyden John Brazilian cops net ‘phishing kingpin’. [Internet Resource]. – Access: [http://www.theregister.co.uk/2005/03/21/brazil\\_phishing\\_arrest/](http://www.theregister.co.uk/2005/03/21/brazil_phishing_arrest/)
3. Patrick Leahy Phishers Would Face 5 Years Under New Bill. [Internet Resource]. – Access: <http://www.informationweek.com/phishers-would-face-5-years-under-new-bill/d/d-id/1030773?>
4. «Fraud Act 2006» The Crown Prosecution Service. [Internet Resource]. – Access: [http://www.cps.gov.uk/legal/d\\_to\\_g/fraud\\_act/](http://www.cps.gov.uk/legal/d_to_g/fraud_act/)
5. Prison terms for phishing fraudsters. [Internet Resource]. – Access: [http://www.theregister.co.uk/2006/11/14/fraud\\_act\\_outlaws\\_phishing/](http://www.theregister.co.uk/2006/11/14/fraud_act_outlaws_phishing/)
6. Draft of the Law on Amendments to the Criminal Code of Ukraine (concerning strengthening liability for illegal trafficking of the means of payment) No. 1272 dated from December 5, 2014 [Internet Resource]. – Access: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52730](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52730).

..