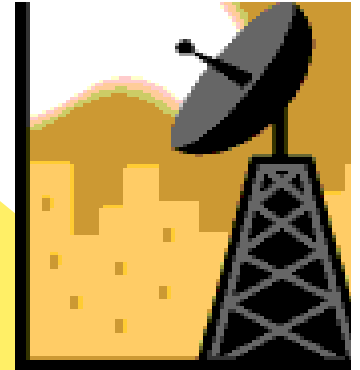




African Telecommunications Union

...promoting development of info-communications in Africa



INTERNET GOVERNANCE(IGF) -Legal Issues on Cyber Security-, Mauritius March, 2009

Facilitator

1. **Adam Mambi,**

EXECUTIVE Secretary, TCRA Con
Legal Consultant MKURABITA

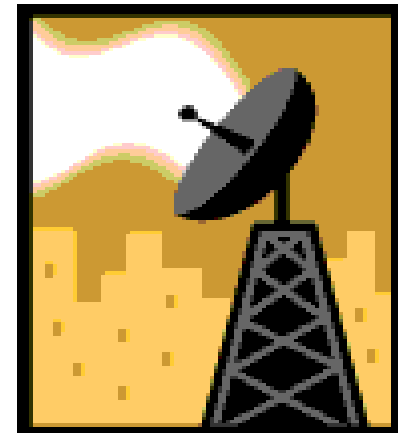
Part-time Lecturer Cyber Law/ICT Law, Intellectual
Property, University of Dar Es Salaam. Tanzania



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What is cyber Security?



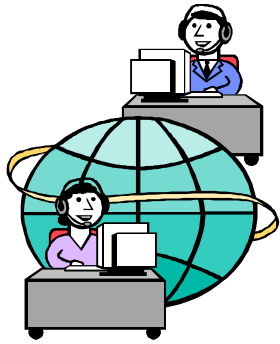
- Security under cyber space
 - The branch of Security dealing with digital or information technology.
 - Computer security is a branch of technology known as information security as applied to computers
 - Internet security is the **prevention of unauthorized access** and/or damage to computer systems via internet access
- Building confidence on the use of ICT



What is at stake with cyber Security?

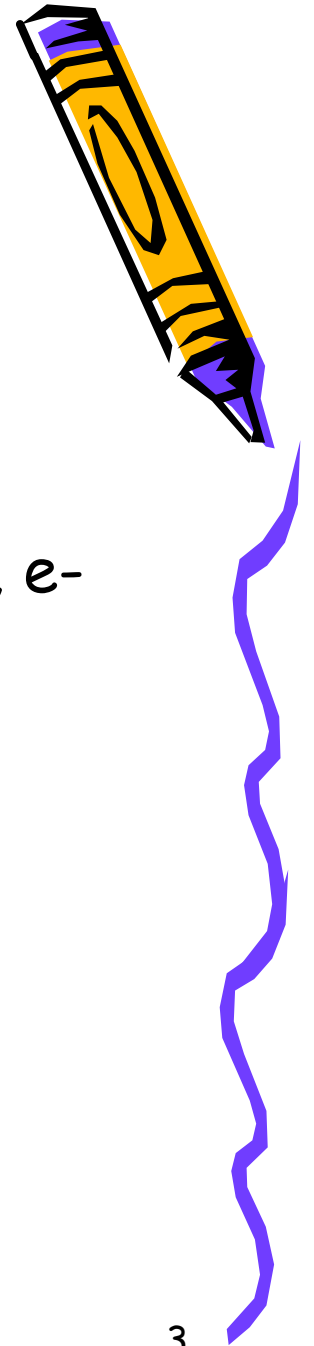
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Areas of Concerns on cyber/e-security & Legal issues

- e-commerce, m-commerce
- Cyber crimes
- E-transactions (e-communications, e-business, e-contracts)
- E-child abuse/pornography
- consumer protection,
- Data protection
- Content regulation



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(A). Legal implications of Internet (e-security & Cyber crimes) & The Law

- ☐ developments of technology has introduced new ways of communication
 - ☐ and doing business electronically
 - ☐ facilitated the commission of
 - ☐ traditional crimes .
- It has **facilitated** the commission of existing crimes such as fraud and theft
 - It has **created** new range of activities such as computer hacking and the development and **distribution of computer viruses, unsolicited emails and hacking.**



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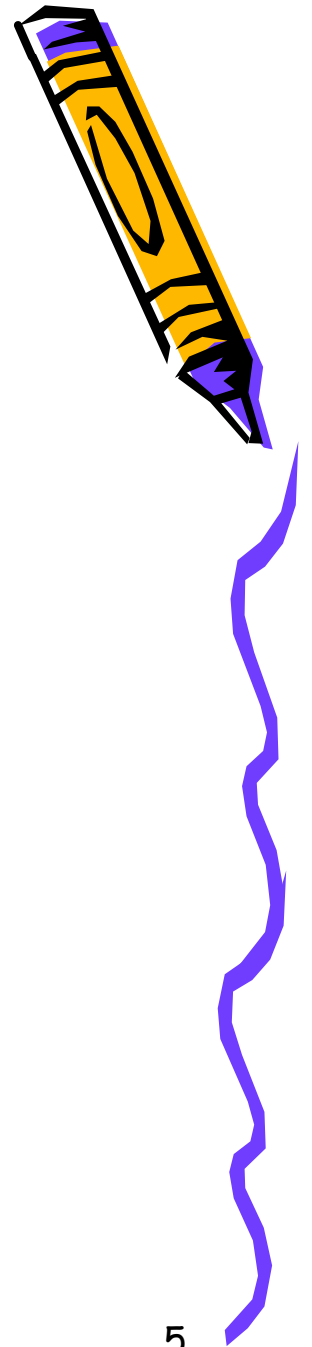
Other Cyber crimes/level of cyber security & Legal Issues

- Internet & Computer-related fraud
- data and programming frauds.
- theft of identity, crimes against children,
- attacks on privacy,
- Computer used as means of object of attack
- ❖ *Do our Laws cater for these e-offences?*



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Legal Issues on Cyber Crimes & Role of Cyber Law;

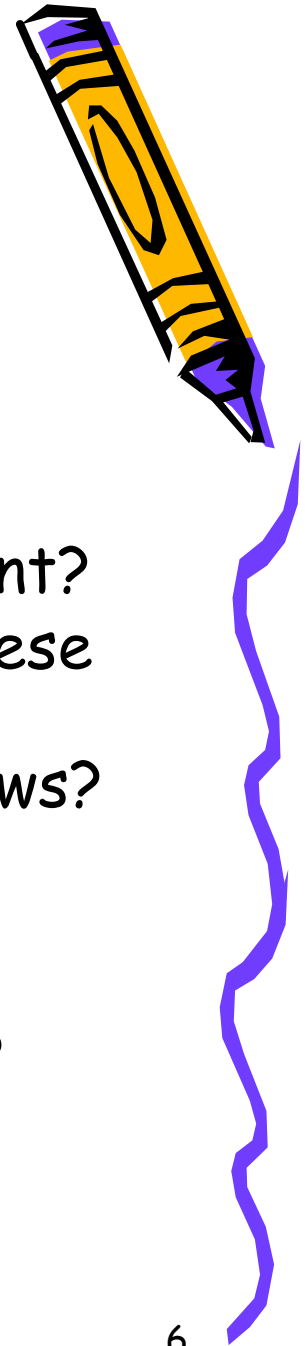
(1) Theft of Information/Data

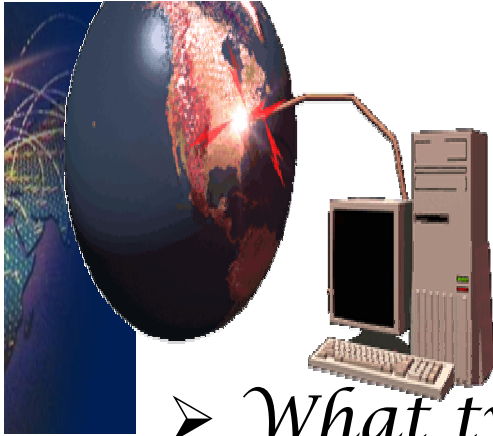
- ❖ Can e-information be stolen?
- ❖ What is “theft” under the current Laws?
- ❖ Can this apply to digital technology environment?
- ❖ What are the implication of technology on these legal provisions?
- ❖ How can we address these issues under the laws?
- ❖ Obtaining property e. g money by deception (using computers)
 - can the computer be deceived?.
 - Is this an offence under digital environment?



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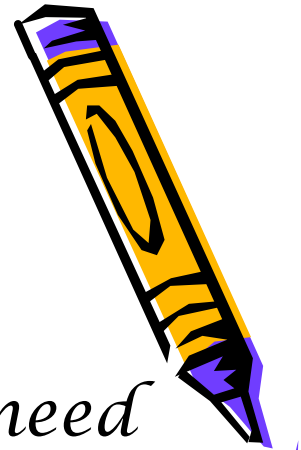
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Content Regulation under cyber space

- *What type of information content that need to be transmitted electron lay?.*
- *How about freedom of speech?*
- *E-distribution of illicit contents*
- *the question of e-content regulation has been a **great debate** over the world due to the development of **digital technology**, **e-commerce**, **privacy** and **e-security**.*
- *In most countries the aim of internet content regulation has mainly focused on protecting children against misuse of Internet.*



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Obscene Materials & Legal Issues:

- ☐ Technology facilitates the recording and transmission of any image and texts on digital media
- ☐ Young Persons/Children most vulnerable
- ☐ Internet Grooming- e-abuse of children
 - Jurisdiction problem on prosecution
 - How can we address Legal issues at Regional and global level?
 - How can e-Providers/ISP/OSP be liable and how can they defend themselves?



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What is ICT doing to Children?

- makes children to **learn, play & communicate**
- Internet plays major role in **child sexual exploitation**
- enables **offenders to target children**
 - **used to distribute home-made and commercial child pornography**
 - **Child pornography easily downloaded from peer-2-peer networks.**
- ❑ **Children suffer serious negative effects** as a result of pornographic exploitation
- **Difficult to trace and identify** Internet users



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Do we have Legal Measures/Laws to carter for these child e-abuse?

- **The US Child Pornography Prevention Act,**
- **EU Convention for cyber crime, 2001;**
- **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007**



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Consider the following Issues

- ☐ *How can we make cyber-world a safe place for young people to work, learn and play ?*
- ☐ *" Is there any global consensus on content regulation, obscenity and indecency? –No.*
- ☐ *What type of content should be considered obscene or indecent?*
- ☐ *Is there any International Agreement on the age of sexual consent?*



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(B) *Consumer protection online & The Laws*

- ☐ *E-commerce brings benefits to Consumers(wider choice)*
- ☐ *Consumers are vulnerable to unscrupulous traders/suppliers*
- ☐ *Online-Consumers not well protected*
- ☐ **Cyber security, Privacy & Data protection**
- ☐ **Cyber anonymity (difficult on identifying persons)**
- ☐ **Difficult verification of age (minors)**
- ☐ **Do we have laws that Cyber that protect on-line consumer?**
- ☐ **No specific law in Tanzania that protect the online consumers against any risks involved**

UK, India, Malaysia, Singapore, US, Slovenia etc have laws



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Rights of consumers online.....

- prior information from their suppliers
The withdrawal right
- Cancellation right
- discretionary right of consumers to cancel their contracts
- to review the entire electronic transaction;
- the security procedures and privacy policy



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Legal initiatives on Consumer Protection from other Jurisdictions

- International Consumer Protection and Enforcement Network (**ICPEN**) established in 1992.
- Tanzania, Kenya and Uganda are not members of ICPEN.
- Electronic Transactions and e-communications Act (RSA). Provides various rights to online consumers (43)
- The UK Distance Selling Regulation
- E-Communications Privacy Act, 1986 (US)



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Legal issues to be considered under cyberspace

- ☐ *where things really happen?*
- ☐ *Jurisdiction problem*
- ☐ *Identification of Parties on the Internet*
- ☐ *How to determine the minors*
- ☐ *Which country has the right to arrest e-crime offenders and prosecute?*
- ☐ *Which enforcement agency will have jurisdiction under the cyberspace?*



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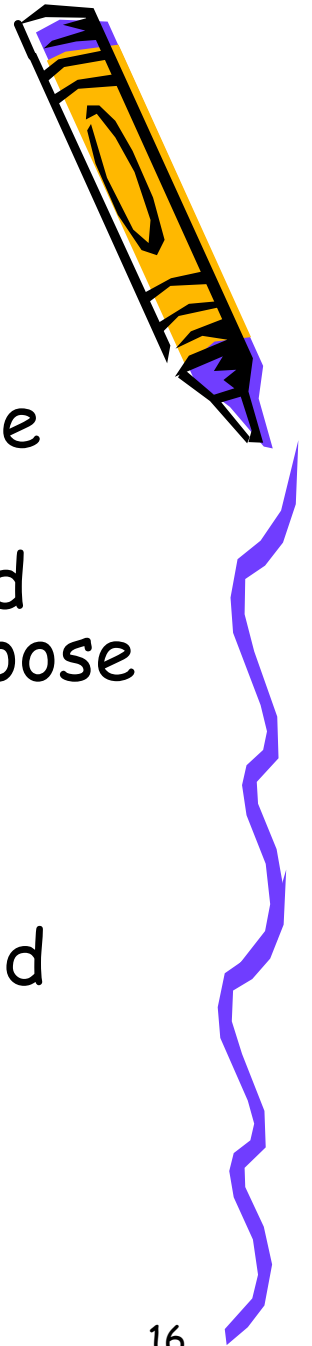
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Legal implication of e-security under e-banking

- E-banking might raise legal issues on the question of privacy.
- The security risk might cause banks and other related financial institutions to loose gain and hope of e-banking if the legal issues and problems are not properly addressed
- No highly assured security against fraud and other related cyber offences



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Impact of digital technology on telecommunications



- ❖ In the past technology-different services with different networks and providers but now everything on everything (convergence).
- ❖ Currently (converged technology) -technologies such as voice, data and video can now share resources and interact with one another
- ❖ No longer possible to regulate each technology
- ❖ Most things have converged in a single media
- ❖ Are the policies and Laws converged?



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Data Protection

- The processing of Data gives rise to many privacy ,e-security, misuse in cyber space activities
- *How to regulate and protect data at national and Regional Level?*
- *How to regulate Information Society?*
- Some Countries have Data Protection Laws



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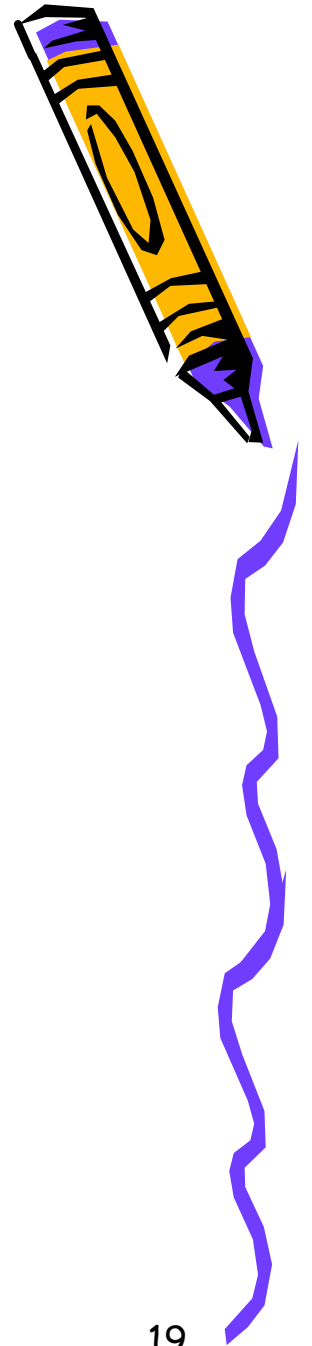
Data Protection Laws

- East African Countries (National Level); No legal framework
- EAC- No legal framework
- Some AU countries with Data Protection Laws; South Africa, Mauritius, Seychelles etc



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International Initiatives on Internet Legal Instruments

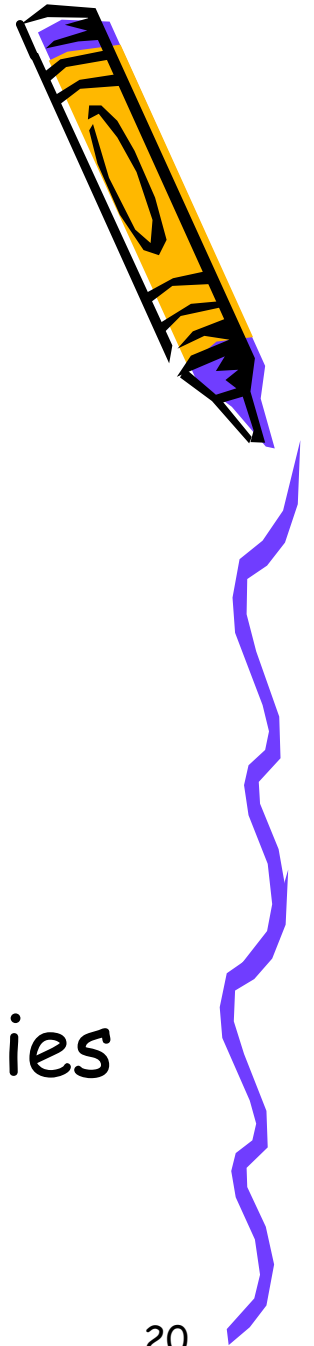
- UNCITRAL Model Laws (E-Commerce, E-Signatures)
- Commonwealth Model Laws
- UN Convention on International e-communications and Contract Formation (2005)
- WIPO Intellectual Property Treaties



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Intellectual Property Protection



- ☐ Copyright most affected area by the development of technology
- ☐ Easy to access copyrighted materials
- ☐ The role of ISP/OSP
- ☐ Software and computer programmes piracy.
- ☐ Domain names cybersquatting
- ☐ How to regulate e-infringement of IPRs?
- ☐ How to balance with freedom of information?



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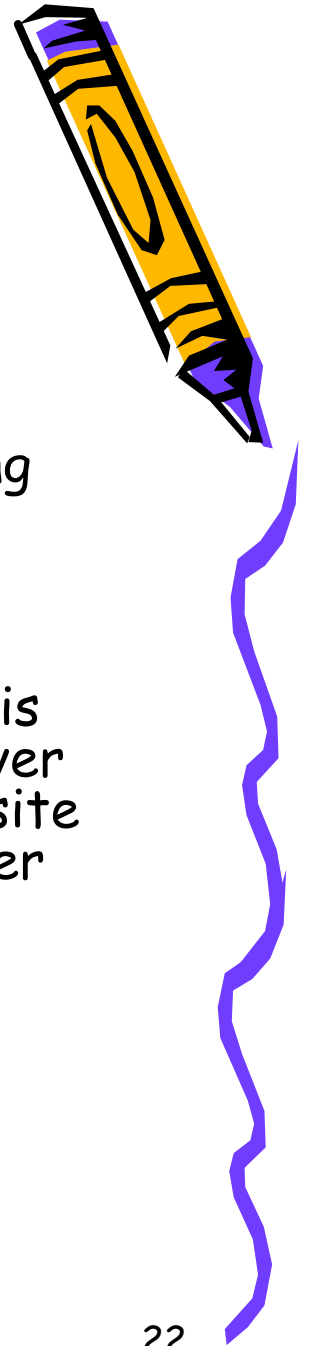
Yahoo Case, 2000

(Jurisdiction problem)

- ❑ A French judge ordered **Yahoo.com** (California, US) to implement technical or access control measures blocking auctions featuring Nazi memorabilia hosted on the Yahoo.com site from French residents.

➤ **Courts Decision**

- ❑ Judge Jean-Jacques Gomez of the County Court of Paris ruled that he was entitled to assert jurisdiction over the dispute since the content found on the Yahoo.com site was available to French residents and was unlawful under French law.



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Message from ITU

- “Be careful who you speak to. Be careful where you go. What is true offline is, unfortunately, also true online. At ITU, we believe that children everywhere have the right to a safe environment, even when that environment is a cyber one”.
- “While the connection might be virtual, the danger is real” (Launching COP)



<http://www.itu.int/osg/csd/cybersecurity/gca/cop/index.html>.

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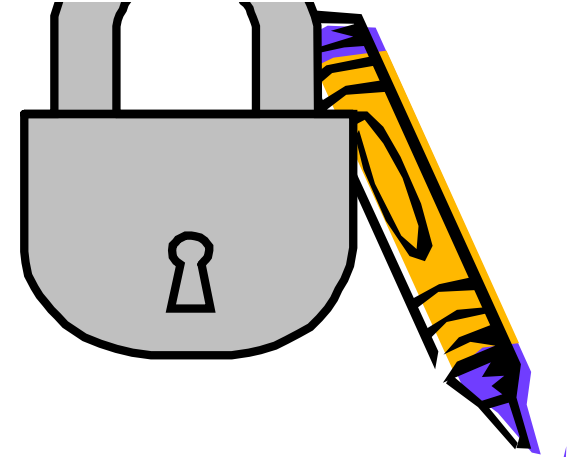


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The End.

*Thank you
for your attention*



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