Classic Tool Tackles Web Crime

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Thieves and fraudsters have always been good at manipulating new technology for their own purposes, and the Internet is no exception. But if one crime fighter has his way, an old legal tool could be the undoing of criminals operating in the shadows of cyberspace.

Craig Malcolm, a managing director of consulting and investigations in Canada, believes that catching Internet wrongdoers may rest in something called a Norwich Pharmacal Order. It is a term few outside the legal profession would know. But Mr. Malcolm, with more than 35 years in the business of criminal investigations, wants to change that.

It dates back to 1974, when a United Kingdom company called Norwich Pharmacal wanted to find out who was importing a certain chemical into the country in violation of one of its patents. It asked the House of Lords to order the U.K. Customs & Excise Commissioners to provide the names of all importers of the chemical so it could identify the culprits.

The court allowed the order, ruling that parties involved in the tortious acts of others -- even if they did nothing wrong themselves -- have a duty to help the entity that is being hurt.

Although the Norwich procedure is often used against financial institutions to trace the flows of stolen money, Mr. Malcolm believes it could be equally useful in compelling information from Internet service providers. He said there are many phony Web businesses out there that have been set up with the express purpose of ripping off individuals and companies, and finding the people who set up and control the accounts is the goal of Internet-crime investigation.

According to the 2006 annual report of the Internet Crime Complaint Center, co-published by the Federal Bureau of Investigation, the total dollar loss from referred cases of fraud last year was $198.4 million, up from $183.1 million in 2005. While this number was an all-time high, the report noted that research shows just one in seven incidents of fraud is reported to enforcement agencies.

While auction fraud represented the bulk of complaints at 45%, nondelivered merchandise was second at 19%. The report also stressed that the anonymity afforded by the Internet is a key problem, as it allows perpetrators to solicit a large number of victims with a keystroke.

Mr. Malcolm argues that an ISP is like a bank in that it has personal information of its account holders. "If you know who posted the Web page in the first place, you'll get an idea of who the alter ego is, an idea of who perpetrated it, how it was put together," he says.

He says another plus is that, unlike a subpoena, which can tip off the criminals that the law is on to them, a Norwich order remains confidential. Once the offender's identity is revealed, it is up to the victim to take the matter to the next level.

There are a few instances in which a Norwich order was used in Canada successfully against an ISP. One case involved grocer Loblaw Cos. in 2003. It learned that someone obtained confidential payroll information for several senior employees that was emailed to 34 Loblaw workers. It wasn't able to identify the sender, but did trace the source of the message to an account with Yahoo Inc. that used an IP address registered to Aliant Telecom, a unit of BCE Inc.

A judge decided that Loblaw had satisfied the rules needed to grant such an order: the company had made a "prima facie" (on first appearance) case for relief; it had been unable to identify the sender of the email after having made reasonable inquiries; it had reason to believe that Aliant possessed information that could help identify the sender of the email. Aliant complied with the judge's order and gave the information to Loblaw.

That same year, the Norwich procedure was used by Best Buy Canada Ltd., a unit of Best Buy Co., in an action against Shaw Communications Inc.Best Buy obtained a Norwich order from the court requiring Shaw to provide the identity of the person who distributed confidential pricing information over the Internet, so that it could begin legal proceedings against that individual.

A Best Buy Canada spokesman said the company takes such matters "very seriously" and was holding to a "zero-tolerance policy on such issues."