

Barcelona CLA
SUMMER LAW CONFERENCE
Cybercrime: new threats and trends

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Topics

- Digital evidence
- Defense's rights
- New threats: spyware

Digital evidence

- Computers and systems
- Smartphones
- Routers, printers...
- Fitness bracelets
- I.M. apps
- Social media
- Virtual assistants
- Etc.



US police think Amazon's voice assistant Alexa may have witnessed a double murder *(Getty Images)*

AMAZON ORDERED TO GIVE ALEXA EVIDENCE IN DOUBLE MURDER CASE

An Echo smart speaker, which features the artificial intelligence voice assistant Alexa, was seized from a home in Farmington where two women were stabbed to death

Electronic evidence

Any information generated, stored or transmitted using electronic devices that may be relied upon in court.

- Volatile and alterable
- Possible to copy with no limit
- Invisible to non-expert's eyes

Private companies



Software malfunction: Mariner 1



Software malfunction



R

Neutrality / Impartiality

Guidebook on Democratic Policing, OSCE, 2008

- Democratic policing requires that the police simultaneously **stand outside of politics** and protect democratic political activities and processes (e.g. freedom of speech, public gathering, and demonstrations). Otherwise, democracy will be threatened (§9).
- The police must execute their duties in a skillful, honest, **impartial** and efficient manner, considering only the public interest and the people they serve (§21).

Daubert TEST
Spanish supreme court
judgement 232/2022 (3/14/22)

Challenges for the defense

- Lack of common admissibility criteria
- Cross border cases (non-inquiry rule)
- Evidence obtained with violation of fundamental rights by private citizens
- Internal investigations

Non inquiry rule

The judge is not obliged to exclude the “tainted” piece of evidence obtained in another country with no compliance with its national standards on admissibility but, instead, he/she can decide whether or not to disregard that element by assessing various factors.

**ECtHR: HR always apply
Judgement Stojkovic vs.
France and Belgium
(10/27/2011)**

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Why HSBC whistleblower Hervé Falciani fears for his freedom

🕒 14 May 2018



GETTY IMAGES

Hervé Falciani has been sentenced in absentia in Switzerland to five years for industrial espionage

By James Badcock

Madrid

Hervé Falciani's life in Spain is far from normal.

A fugitive from Swiss justice since 2009, this former HSBC computer systems analyst turned anti-fraud activist is constantly on the move. He has faced threats to his life considered credible enough by Spanish authorities to provide him with bodyguards.

ECtHR: Internal Investigations

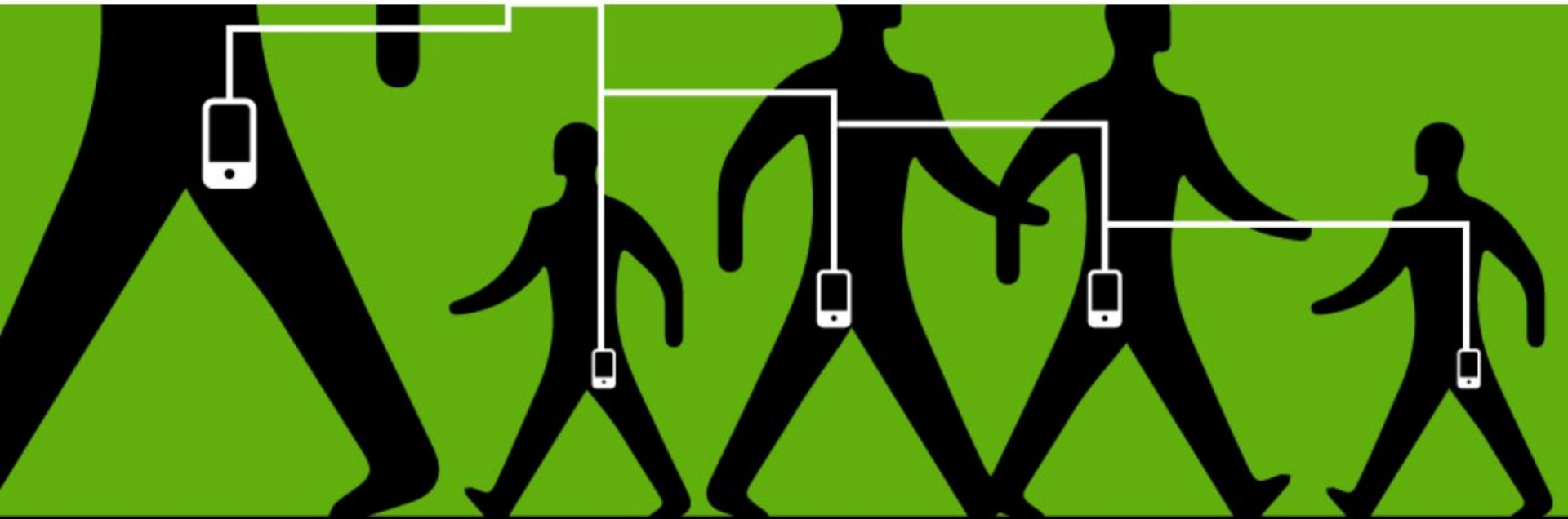
Judgements:

Bărbulescu vs. Romania #2 (9/05/2017)

López Ribalda vs. Spain (10/17/2019)

Pegasus Project Shows the Need for Real Device Security, Accountability, and Redress for Those Facing State-Sponsored Malware

BY CINDY COHN | JULY 20, 2021



C.a.a.S: Crime as a Service

Computer experts develop advanced tools or services and sell them to less experienced cyber criminals. Consequently, even those with limited computer knowledge can carry out cyberattacks easily.

Standards

- Legal standards regarding use of spyware
- Judicial authorization and necessity criteria
- Strict limits to duration and scope
- Definition of “national security”
- Guidelines for oversight of intelligence services actions
- Obligation to notify after surveillance
- Right to access information stored
- Compliance obligations for industry

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