Investigating cybercrime

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Cybercrime investigations require the use of novel investigative methods to successfully gather evidence. This study examines the evidence-gathering activities of law enforcement officials that take place by (1) the gathering of publicly available online information, (2) the issuing of data production orders to online service providers, (3) the use of online undercover investigative methods, and (4) performing hacking as an investigative method.

The legal basis of these investigative methods is also examined. The author concludes that the legal basis in Dutch law is ambiguous for many of the identified digital investigative methods. However, a clear legal basis for investigative methods that indicates the scope of investigative methods and the manner in which they are applied must be available. It helps prevent arbitrary application of power by governmental authorities and is therefore essential for protecting the rule of law. The author examines how a foreseeable legal framework for the identified investigative methods can be created that meets the requirements that are derived from the right to privacy in art. 8 ECHR.

The borderless nature of the Internet is also taken into account. The question is addressed to which extent digital investigative methods can be applied unilaterally, i.e., without authorisation of the State involved and without a treaty basis, across State borders. The analysis results in a list of recommendations to improve the regulations for digital investigative methods on both the domestic level and the international level. The leading idea is that also in the digital domain evidence-gathering activities by law enforcement officials are bound by law.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School. This study is part of the Law School's research programme 'Effective Protection of Fundamental Rights in a pluralist world'.

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