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## ABSTRACTS

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*Regulating virtual cybercrime by means of the criminal law: a philosophical, legal---economic and pragmatic dimension*

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This paper will be about the question whether or not virtual cybercrime should be regulated by means of the criminal law. By virtual cybercrime I mean crime that involves a specific aspect of computers or computer networks: virtuality. Examples of virtual cybercrime are: virtual child pornography, theft of virtual items and the killing of an avatar (a virtual person). These behaviors are not commonly prohibited yet. The general question of which conduct should be criminalized and which not is dealt with in a well---known 1972 paper by the Dutch lawyer and criminologist Hulsman. According to Hulsman the aforementioned question has three dimensions: a (moral) philosophical, a legal---economic and a pragmatic dimension (Hulsman 1972, pp. 87---88). I agree with Hulsman that these are the three (main) aspects that have to be taken into account; for, although the topic of criminalization has received scarce scholarly attention, most of what has been written on it can

indeed be categorized under one of these three headings. In this paper I will, therefore, study the specific question whether or not virtual cybercrime should be regulated by means of the criminal law from a philosophical, legal economic and pragmatic point of view.

I have extensively treated the philosophical dimension of the question whether or not virtual cybercrime should be regulated by means of the criminal law in earlier work, both in a general way and as applied to specific instances of virtual cybercrime (Strikwerda 2011; Strikwerda 2012; Strikwerda forthcoming a; Strikwerda forthcoming b). Therefore, a summary of and reference to this work will suffice for the purposes of this paper. In a nutshell, I have established that it is a necessary condition for a virtual cybercrime in order to count as a crime under existing law that it has an extravirtual consequence (a consequence outside the virtual environment). That is also a sufficient condition if the consequence is of such a nature that it can be brought under the scope of one of the liberty---limiting principles as distinguished by the legal philosopher Feinberg in his voluminous work *The Moral Limits of the Criminal Law*, namely: the harm principle, the offense principle, legal paternalism or legal moralism.

The legal---economic dimension of the general question which conduct should be criminalized and which not has given rise to a separate field in legal studies, which can be called the law and economics approach (Posner 1985; Bowles, Faure & Garoupa 2008, p. 390; Husak 2008). In essence, the law and economics approach consists of a cost benefit analysis: the appropriate domain for the use of criminal law is determined by the costs and benefits of using criminal law tools relative to non---criminal instruments, such as administrative, civil or tort law (Bowles, Faure & Garoupa 2008, p. 395). I will reflect on the costs and benefits of using criminal law instruments for the regulation of virtual cybercrime relative to non---criminal instruments. Since virtual cybercrime often takes place in the virtual environments of computer games, I will pay specific attention to the rules of games as an alternative for criminal law in the regulation of virtual cybercrime.

The pragmatic dimension of the general question which conduct should be criminalized and which not has to do with the overall capacity of the criminal justice system. As a rule, the criminalization of conduct should not overload the criminal justice system. At the time Hulsman wrote his paper this dimension was seldom taken into account (Hulsman 1972, p. 88). But since the scope of the criminal law has dramatically expanded during the past several years, a trend which is called "overcriminalization", it is now receiving more and more attention (Husak 2008, p. 3). I will study whether or not the criminal justice system would be able to handle the criminalization of virtual cybercrime from a pragmatic point of view.

At the end of his paper, Hulsman concretizes his analysis of the philosophical, legal---economic and pragmatic dimension of the question which conduct should be criminalized and which not into a list of "criteria for criminalization" which legislators or judiciaries can use to decide on actual cases (Hulsman 1972, p. 89---92). Using Hulsman's criteria as a starting point, I will do the same with regard to the specific case of virtual cybercrime. I will conclude by testing which instances of virtual cybercrime should be criminalized and which not according to the criteria that I have established.

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