

**TANGANYIKA LAW SOCIETY:
PROGRAMME FOR THE CONTINUING LEGAL
EDUCATION SEMINAR**

**TOPIC: "Ethics on ICT and Cyber Law"
BLUE PEARL HOTEL - DAR ES SALAAM
FRIDAY 29TH APRIL, 2011**

Presenter : Adam Mambi, (Advocate)

**-Deputy Executive Secretary , Law Reform
Commission, Tanzania.**

**-Part-time Lecturer on ICT/Cyber Law &
Intellectual Property Law, University of Dar Es
Salaam**





What is Ethic?



Ethics are moral standards that help guide behaviour, actions, and choices.

- ❑ Ethics are grounded in the notion of *responsibility (as free moral agents, individuals, organizations, and societies are responsible for the actions that they take)* and **accountability**
- ❑ individuals, organizations, and society should be held accountable to others for the consequences of their actions.
- ❑ In most societies, a system of laws codifies the most significant ethical standards and provides a mechanism for holding people

❑ **ICT ethics** are not exceptional from the above-mentioned view of ethics.



5/5/2011

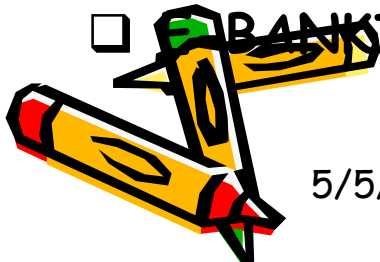
Copyrighted Work--A. MAMBI

2



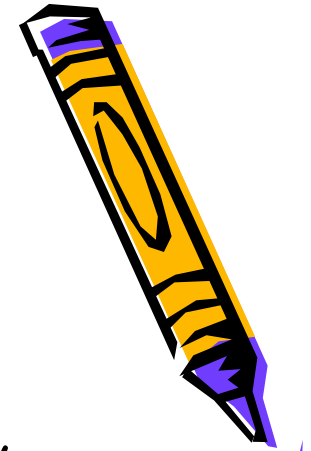
ICT Ethical Issues

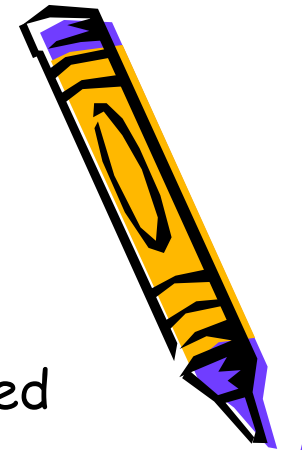
- Cyber Crimes
- Cyber Security
- Loss of privacy
- Intellectual property
- Freedom of speech and press
- Professional Ethics
- Misuse of telecommunications
- Data Protection
- e-gambling/online games
- Content regulation
- BANKING & M-banking



Implications of ICTs

- ICT has changed the way people communicate, behave, do business and interact
- The Internet boom has provided many benefits for society,
- ICT facilitates the creation of new tools and new ways for people to interact.
- However, the Internet has not been without **negative aspects**.
- ICT has created new concerns about **privacy, spam and viruses**.





- ICT with globalization and digital convergence has raised **complex ethical, legal and societal** issues.
- We are faced with complex and difficult questions regarding the freedom of expression, access to information, the right to privacy, intellectual property rights etc
- rights that are already legally recognized are daily being violated, whether in the name of political stability, religious causes, the campaign against terrorism, or for personal greed and interests etc
- Violations of these rights have created new problems in human social systems, such as **cybercrime, digital security and privacy concerns**, all of which have affected people's **lives** either directly or indirectly.



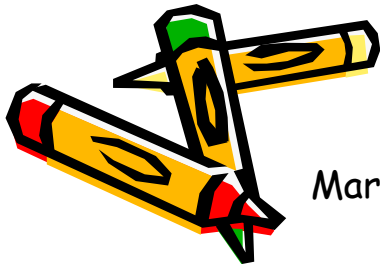
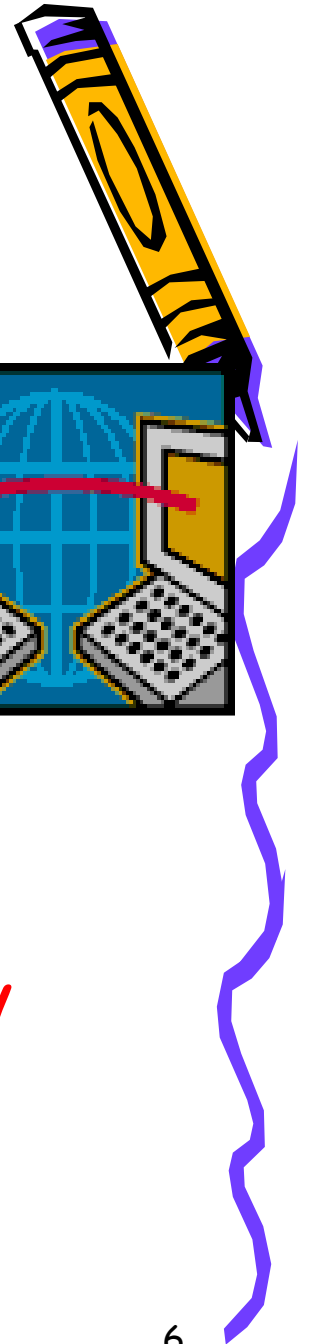
5/5/2011

Copyrighted Work--A. MAMBI

5

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

- ❑ developments of technology has introduced new ways of communication and doing business electronically
- ❑ New ways of establishing and maintaining relationships
- **facilitated** the commission of existing crimes such as fraud and theft
- **created** new range of illegal activities such as *computer hacking* and the development and ***distribution of computer viruses, unsolicited emails and hacking.***



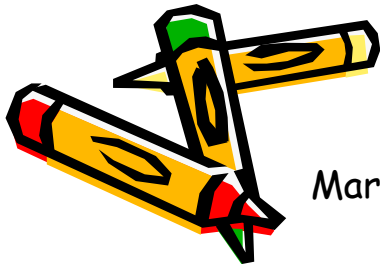
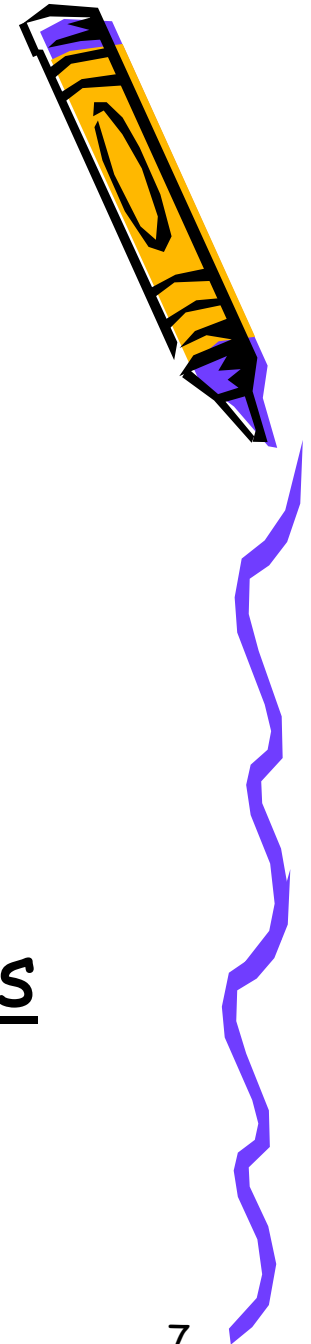
March 2009

Copyrighted Work--A.
MAMBI, TCRA



Hacking (unauthorized access): What Threat the hacker can pose?

- Might be tempted to steal money
- read or copy information
- might erase or modify
- download programs or data, or add something,
- direct the computer to have goods sent to him.

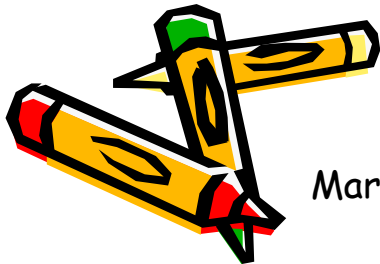




Intellectual Property Protection



- Copyright most affected area by t...
development of technology
- Easy to access copyrighted materials
- Digital infringement of 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?



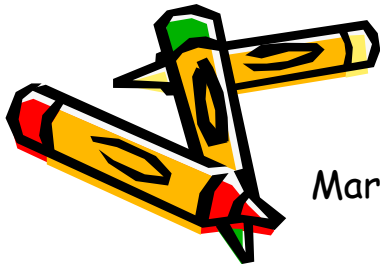
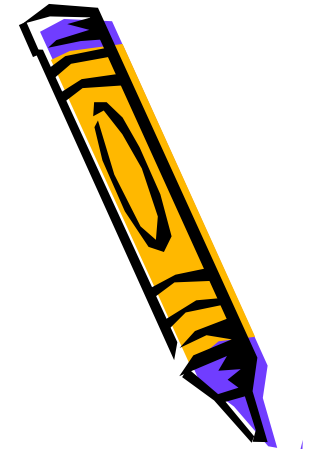
March 2009

Copyrighted Work--A.
MAMBI, TCRA

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?
- ❖ *Legal Elements of theft of "asportation" and permanently depriving someone's property*
- ❖ *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?*



March 2009

Copyrighted Work--A.
MAMBI, TCRA



(2) Obtaining property e. g. money by deception (using computers)



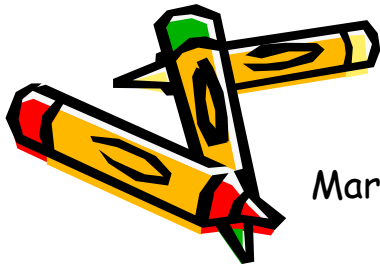
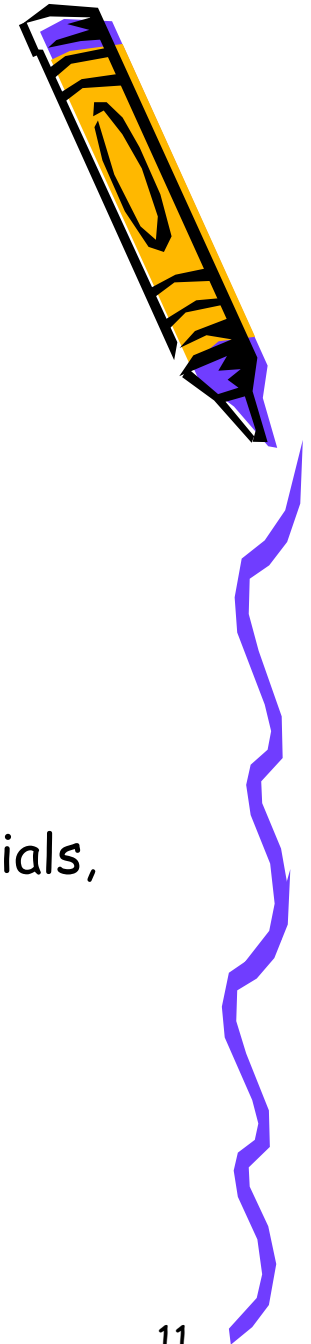
- Legal Provisions: A person who by any "deception" dishonestly obtain property belonging to another, with the intention of permanently depriving the other, shall be liable to imprisonment
- *Issues: can the computer be deceived?*
- *Is this an offence under digital environment?*
- *Relevant Case: DPP v. Ray [1974] AC*

370.



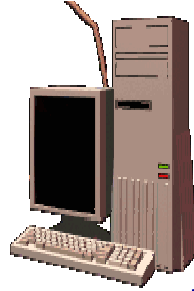
Other Cyber crimes/level of cyber security & Legal Issues

- Internet & Computer-related fraud
- theft of identity,
- attacks against person's dignity,
- Attacks & interference on privacy & Personal dignity,
- e-crimes against children (violence on physical & psychological integrity),
- blackmail, distribution of illicit content
- cyber-stalking, Phishing, publications of obscene materials, cyber pornography
- Theft of information

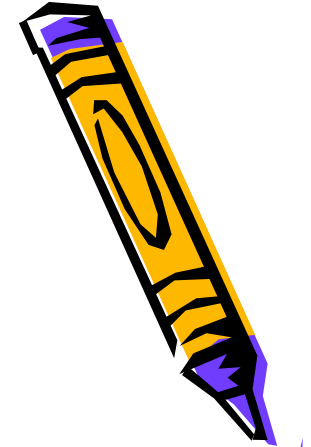


March 2009

Copyrighted Work--A.
MAMBI, TCRA

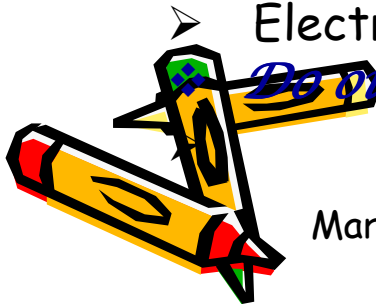


Content Regulation under cyber space



- *What type of information content that need to be transmitted electron lay?.*
- *How about freedom of speech?*
- E-distribution of illicit contents
- Great challenge on e-content regulation
- Computer is used as means of object of attack
- e-crimes using internet & other communications technologies
- computer generated pornography pose Legal challenges for courts and law enforcement agencies
- Images can be altered or added
- Easy to superimpose a child's face on an adult's body, erase pubic hair and reduce/minimize breasts to make adult images look like children.
- Electronic Evidence pose legal challenges

Do our Laws carter for these e-offences?



March 2009

Copyrighted Work--A.
MAMBI, TCRA

12



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
- ❑ Children are caught through chat rooms
- *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?*



March 2009

Copyrighted Work--A.
MAMBI, TCRA

13



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



March 2009

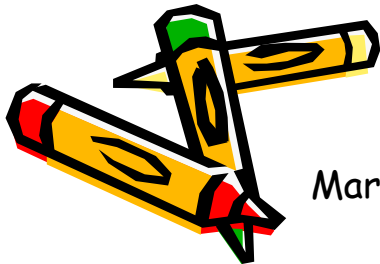
Copyrighted Work--A.
MAMBI, TCRA

14



Dangers Children Face on-line?

- Exposure to inappropriate & harmful materials (obscene, drugs & alcohol)
- Exposure to **political & Civil War**
- Access to Images of e-child sexual abuse (child pornography)
- Exposure to dangerous contacts
- Invasion of privacy and online fraud
- exposure to e-crimes



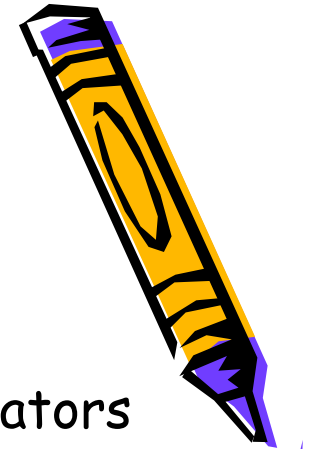
March 2009

Copyrighted Work--A.
MAMBI, TCRA

15

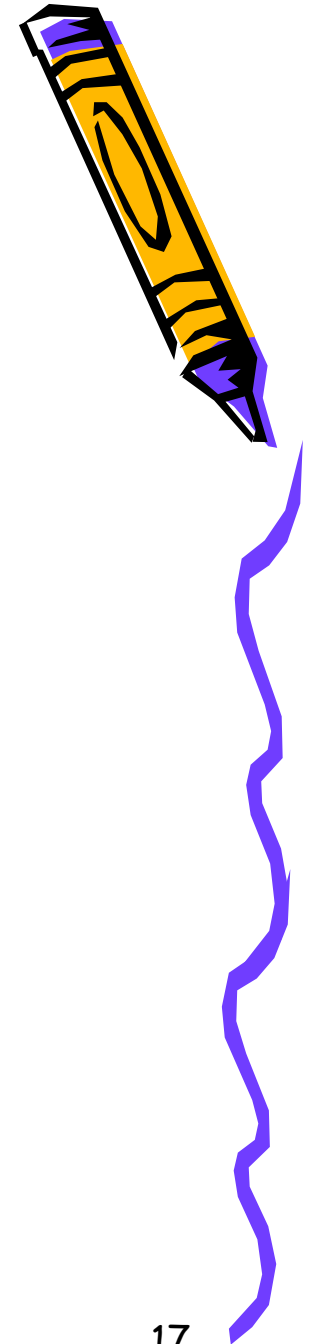
Who are the culprits/exploiters/Predators?

- **Producers** (including photographers, publishers and creators of home videos),
- **middlemen** (procurers and parents),
- **Distributors** (including advertisers & traders)
- **Collectors & Sex Tourists**
- **Child molesters** (they use Internet to **prey** on children)
- **e-publishers** of child pornography (display, showing or circulation)
- Problem of **anonymity** under cyberspace.
- **Difficult to trace and identify** Internet users
- Difficult investigation of child pornography
- Content can originate and be accessed to locations anywhere around the world, (minors or adults?)

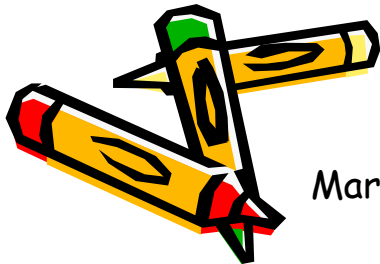




Scope of the problem/some data



- Victims of online sexual abuse are getting markedly younger;
- ICMEC Statistics of identified offenders possessed:
 - ❑ *83% of child porn images from 6-12 years old.*
 - ❑ *39% of seized images of children 3-5 of age.*
 - ❑ *19% of the images are of children under 3.*
- FBI-over 50% of all child pornography seized in the US indicates boys rather than girls.:
- Child sex offences being committed "on demand" and delivered via webcam by the offender

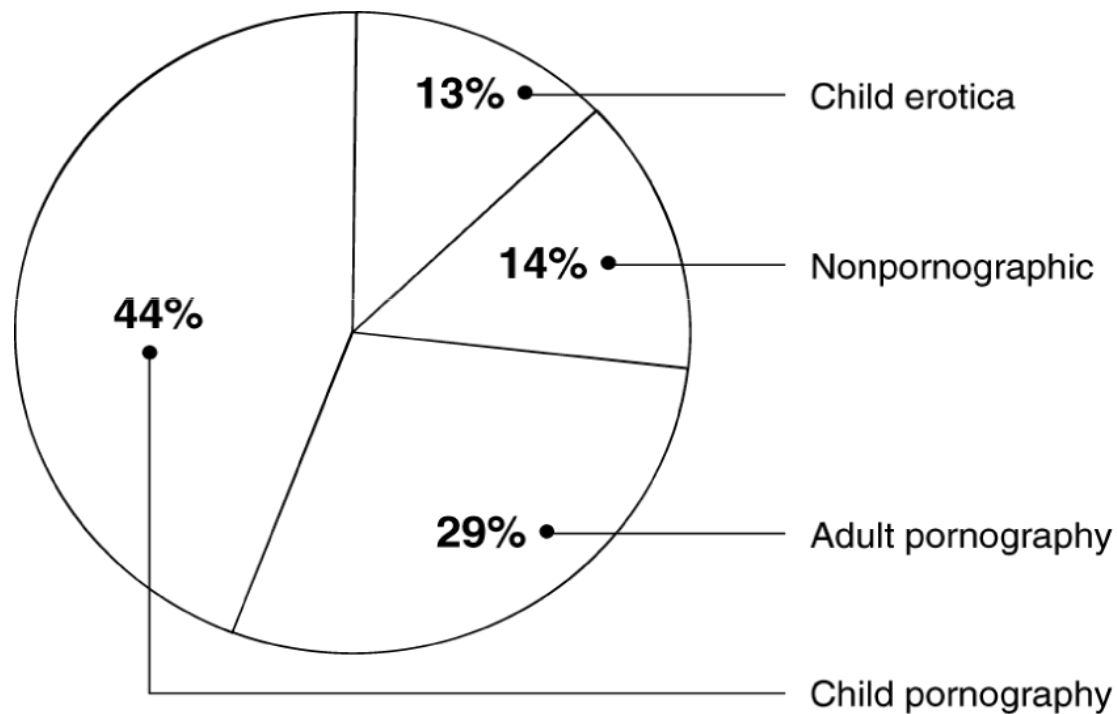


March 2009

Copyrighted Work--A.
MAMBI, TCRA

17

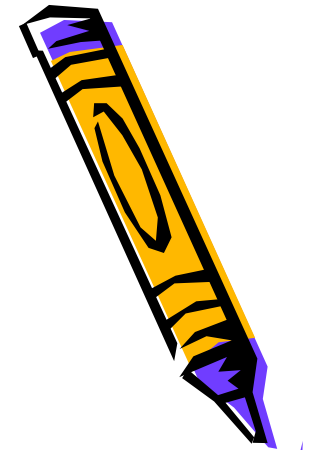
Classification of Images Downloaded through Peer-to-Peer File-Sharing Program (Source: US General Accounting Office)



Source: Customs CyberSmuggling Center.

March 2009

Copyrighted Work--A.
MAMBI, TCRA



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



- ❑ Tanzania and EAC in general, No e-Laws to protect Children
- **The US Child Pornography Prevention Act**, defines child pornography as any visual depiction of a minor; any person under 18 years old, which is produced by any means, of sexually explicit acts or conducts
- Covers pornographic photographs of children that are **computer generated** regarded the same as "real" images
- **EU Convention for cyber crime, 2001;**
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007



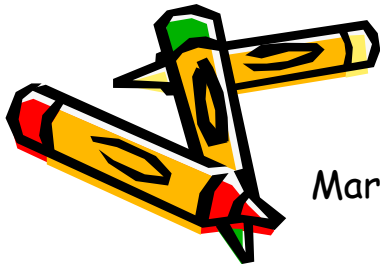
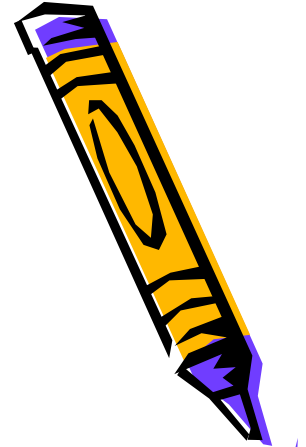
March 2009

Copyrighted Work--A.
MAMBI, TCRA

19

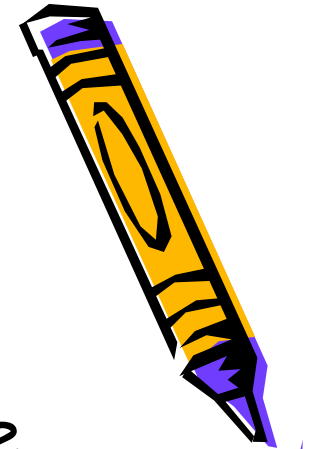
Some Judicial Response

- In *R v. Fellows (1997) 2 ALL ER*, The appellant working at the Birmingham University using university Computer linked, compiled a large database of pornographic images of children. He did it without the consent of the University.
- *Issue*; whether the images stored on a computer disk could be classed as photographs AND BE USED AS e-EVIDENCE.





Judicial Response, Tanzania



- The admissibility of electronic evidence was tested by the High Court of Tanzania Commercial Division in the case of *Trust Bank Tanzania Ltd. v. Le-marsh Enterprises Ltd., Joseph Mbui Magari, Lawrence Macharia* [2000]



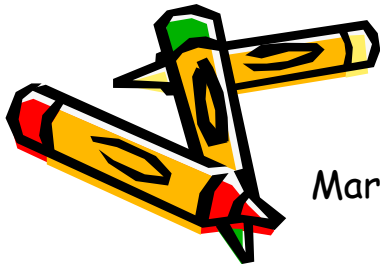
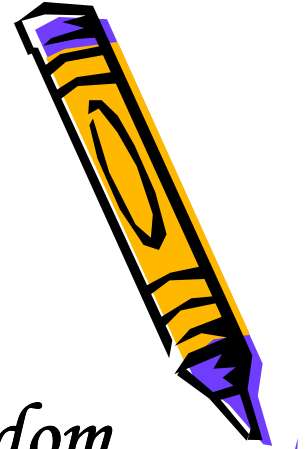
March 2009

Copyrighted Work--A.
MAMBI, TCRA

21

Conflicting International Legal Instruments?. Which supersede the other?

- *How to balance the Rights in Article 19 (freedom of expression and the right to privacy) of the Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and the right of child under CROC?*
- *Apply Limitation principles /No absolute right*





- ❑ As with the right of privacy, the right to freedom of opinion and expression in the Information Society is tightly intertwined with ICTs.
- ❑ Technologies can open channels by which information may be shared and opinions expressed
- ❑ The processing of Data gives rise to many privacy ,e-security, misuse in cyber space
- ❑ Personal data such as credit cards etc may be routed via countries with lack of data protection.
- ❑ Threats on the use of data processing techniques on freedoms & rights of individuals



How to regulate and protect data at national and Regional Level?

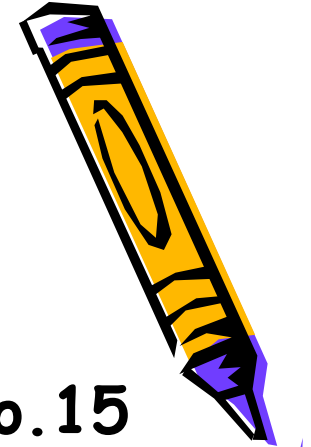
5/5/2011

Copyrighted Work--A. MAMBI

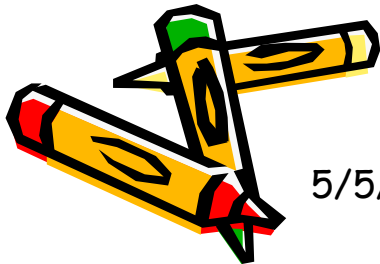
23



Developments of Cyber Laws in Tanzania



- 1) The Evidence Act, Cap 6 (through Act No.15 of 2007 to accommodate e-evidence)
 - 2) The Customs (Management and Tariff) Act, Cap 403
 - 3) The Excise Management & Tariff Act, 1954 Cap 147
 - 4) The Airport Service Charge Act, Cap 365
- B: Enactment of the Electronic and Postal Communications Act (EPOCA), 2010



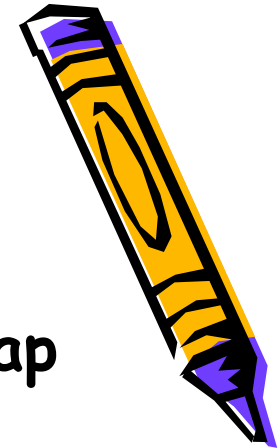
5/5/2011

Copyrighted Work--A. MAMBI

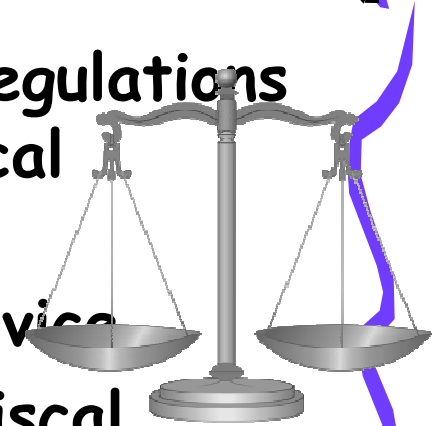
24



CYBER/E-TAXATION



- ❑ Amendments of the Value Added Tax Act, Cap 148.
- ❑ This was done through adoption of new Regulations in 2010-Value Added Tax (Electronic Fiscal Devices, G.N.No 192).
- ❑ Regulation defines electronic signature device
- ❑ Defines document printed by electronic Fiscal device
- ❑ Defines SIM Card and System(e-information system)



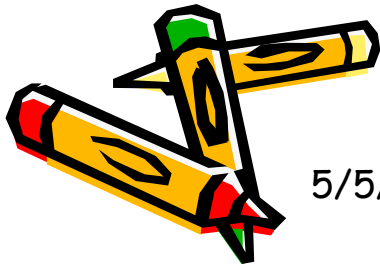
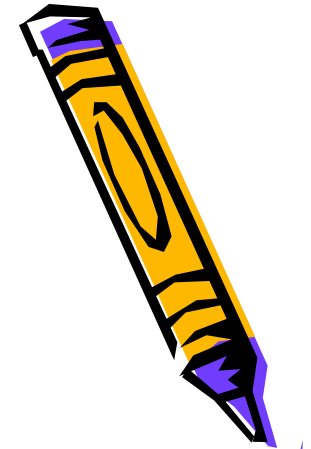
5/5/2011

TANZANIA-Presenter-Adam
MAMBI

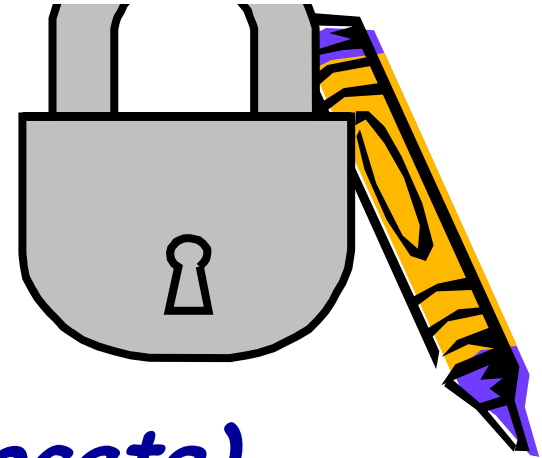
25

International & Regional Level

- ❑ UNCITRAL Model Laws
- ❑ UN Convention on International Contracts and Communications 2005
- ❑ EU Cyber Convention 2001
- ❑ EAC Framework on Cyber Law (Phase 1)



The End .
Thank you Very Much
for your attention



- Author: Adam Mambi (Advocate)***
- ❖ ***Director Research Department, Law Reform Commission, Tanzania.***
 - ❖ ***Part-time Lecturer on ICT/Cyber Law & Intellectual Property Law, University of Dar Es Salaam***
 - ***Email: adammambi@yahoo.co.uk***
 - ***Mobile Phone: 0713291302***

