

Is the law regarding IMEI number adequate?

Introduction

Every phone, either manufactured in India or outside, has a unique 17 or 15-digit code that identifies a mobile. This code is known as the International Mobile Equipment Identity (“IMEI”) number. The IMEI number is essential to trace the movement of any mobile user. In 2009, the Indian markets were flooded with some low end mobile phones that had no IMEI number on them and the Indian government decided to disconnect all phones without an IMEI number. Even the import of mobile phones without IMEI number was banned in 2009 in accordance with the parameters laid down by security agencies and the Union Home Ministry.¹ The aim of the ban was to put a check on the mobile phones without IMEI number in India in the interest of the national security.

In light of the above the significance of the IMEI number becomes more apparent more so because the IMEI number can help in tracking stolen phones. However India does not have any specific guidelines or legislation regarding the IMEI number. This bulletin shall explain IMEI number, its significance and will also attempt to survey through the guidelines that other countries have been following in order to suggest the best practices for Indian conditions.

1.0 IMEI number: significance and control

IMEI number is a unique serial number that can identify handsets according to internationally accepted standards. In most GSM handsets, IMEI number can be found below the battery or by entering the code *#06#. In CDMA handsets, the equivalent Electronic Serial Number (“ESN”)/Mobile Equipment Identifier (“MEID”) can also be found inside the handset below the battery. It is a series of numbers that identifies key elements of the phone, registered to a single user and can be reported when the phone is stolen. Not only is each number different, but each number can explain the origin of the phone, the model, and the serial number. It, therefore, remains the only reliable method through which such stolen phones can be recovered and prevented from being used for illegal purposes.

¹“Mobile phones import ban not China-specific” The Indian Express, May 11, 2010 <<http://expressbuzz.com/finance/mobile-phones-import-ban-not-china-specific/172492.html>> viewed on March 15, 2011.

Essentially, a mobile handset has three co-ordinates, IMEI number, SIM card and the tower that routes the call. IMEI number is the official identification of the phone which identifies phone to the operator. SIM card number is identifiable when a call is made from the mobile set. Though this number can change with the operator, now with mobile number portability even the SIM number can remain same even with the change in the operator. Finally, the tower that routes the call is a variable factor as they are different across cities and continents.

Given the ability to trace a person through his IMEI number, it becomes crucial that all handsets should have that number embedded on them. When the Indian markets were flooded with cheap handsets of foreign origin without any IMEI number the Directorate General of Foreign Trade (“DGFT”) took stock of the situation and issued a notification banning the import of mobiles without IMEI number on them. The DGFT prohibited “Import of ‘Mobile Handsets’² without IMEI number or with all Zeroes IMEI.³ Subsequently DGFT also prohibited⁴ the import of ‘CDMA mobile phones’⁵ without ESN/MEID or with all Zeroes as ESN/MEID.

2.0 Reasons to “control” non-IMEI handsets

The latest press release of Telecom Regulatory Authority of India (“TRAI”) provides that India has more than 750 million⁶ mobile users until January 31, 2011 and this number is growing considerable every day. With increasing number of phone users, they have also become prone to thefts as these phones are a small portable and handy device that can easily be targeted. The scale at which mobile phones are stolen is so high that even police has identified them as CRAVED⁷ (Concealable, Removable, Available, Valuable, Enjoyable, Disposable) items. This situation will exacerbate with phones becoming more sophisticated with advanced functionality, such as the ability to pay for goods and services directly through the handsets.

The theft of mobile phones is not just a personal loss but also a threat to national security as the stolen mobiles are prone to misuse. In the *State (N.C.T. of Delhi) vs. Afsan Guru and Shaukat Hussain Guru vs. State (N.C.T. of Delhi)*,⁸ the Supreme Court relied on evidence provided with the help of IMEI number to convict the accused for offences which also reflected the importance of IMEI number in the criminal justice system. There are several cases where conviction has been done on the

² Classified under EXIM Code ‘8517’.

³ By notification no. 112 dated June 16, 2009.

⁴ By notification number 13/2009-2014 dated October 14, 2009.

⁵ Classified under ITC (HS) Code ‘8517’.

⁶ Press Release No. 13/2011 of TRAI.

⁷Tr. G. Dharmarajan, Criminal Investigation Review <
<http://www.tnpolice.gov.in/pdfs/ReviewcyberJan08.pdf>> viewed on March 15, 2011.

⁸ AIR2005SC3820, 2005CriLJ3950, 122(2005)DLT194(SC), (2005)11SCC600, [2005]Supp(3)SCR79.

basis of the mobile record and analysis of the IMEI number found on the mobile. In *Gajraj vs. State, the Delhi High Court*⁹ the crucial evidence relating to the subject mobile phone was acknowledged by the court where in handset of the deceased was the most important piece of evidence. Call records suggested that the said handset was in the possession of the accused soon after the death of the deceased which proved as impeccable evidence. In yet another case of *Vinod Kumar vs. State*,¹⁰ Delhi High Court accepted the evidence that revealed that the IMEI number of the mobile phone used by the accused person connected him with the crime of the murder of the deceased.

As a safety measure, the mobile user whose handset gets stolen should get the SIM card blocked from the operator which can at least ensure that the mobile connection is not misused. It should be understood here that the operator does not take any step either to block the handset or for tracking its usage. For the mobile users without any IMEI number should contact their mobile operator and ask them to implant an IMEI number on the phone. The Cellular Phone Operator Association of India (“COAI”) has also made provision to incorporate a valid IMEI into such handsets through the use of a software mechanism. In US, if a mobile handset is lost or stolen, the owner of the device can contact Central Equipment Identity Register (“CEIR”) which blacklists the device in all currently operating switches and makes the lost or stolen handset unusable. India can also have such a registry.

Moreover, most mobile devices are software based and can be easily reprogrammed. The IMEI number of such mobile phones can be changed through reprogramming including making all the digits zero. In India, although theft of mobile phone is a criminal offence covered under existing laws, there is no specific legislation to prevent the re-programming of mobile phones. Currently, a consultation paper¹¹ on issues relating to blocking of IMEI for lost/stolen mobile handsets has been published by the telecom authority emphasizing on this aspect of having a specific legislation against reprogramming of phones to change IMEI number. The said paper has been published calling for comments from subscribers, experts in the field and general public which are still awaited.

3.0 Control measures undertaken

In India, IMEI number has not been used for public benefit with much success. The inadequacy of legislation and its implementation can be regarded as the primary reason for it. In 2008, the Department of Telecommunication (“DOT”) gave directions to all the operators/network providers to maintain proper Equipment Identity

⁹ Decided on March 18, 2009 (Crl. A. No. 461/2008).

¹⁰ Decided on March 16, 2009 [Crl. A. No. 561/2008].

¹¹ TRAI Consultation Paper No. 14/2010 “Issues relating to blocking of IMEI for lost stolen mobile handsets”. Dated November 2, 2010.

Register¹² of the IMEI numbers. Further, DOT also gave directions to all telecom operators that calls from mobile handsets with any IMEI number which is not available in the latest updated IMEI database of GSMA, or without IMEI or all zeroes as IMEI number should not be processed.¹³ Thereafter, DOT started a one-time Genuine IMEI Implant Program ¹⁴(“GII”) to implant IMEI number on such phones. The Mobile Standards Alliance of India (“MSAI”) was exclusively authorized by GSM Association to perform GII. MSAI initiated the work in partnership with COAI and DOT to implant the genuine IMEI numbers on to the mobile handsets which are carrying bad/non genuine IMEI numbers as a one-time amnesty program.

A major step was taken by the legislature in 2009 when the Director General of Foreign Trade issued a notification¹⁵ prohibiting “Import of Mobile Handsets without IMEI number or with all zeroes IMEI.” Till then, however, a large number of such mobile devices were already in the country and they still are being smuggled through the grey market.

In other countries¹⁶ like Australia and Turkey, customer on losing his phone via stealing can report to the service provider either directly or through a call centre not only to bar the SIM card but also to block the handset from further use across all networks. Operators in France are obliged to put the IMEI numbers in a centralized database for identifying terminals that have been declared stolen and to block the terminals accordingly. Similarly, the telecom service providers in Austria, Cyprus, Denmark, Finland, Italy, Sweden, Estonia and Ireland maintain CEIR wherein all operators are its members. While United Kingdom has legislation in place under which re-programming of mobile handset is an offence.

Considering the situation with respect to inadequate use of IMEI numbers, India can employ global database like CEIR to make it a cross-country effort against theft of phones. The devise relevant procedures for data collection, exchange, and monitoring of data to improve implementation can be undertaken. A legislation to criminalize reprogramming of mobile devices to change their IMEI number can act as deterrent to the misuse of stolen mobiles. The improvement in handsets security, a problem which needs to be tackled at source by the collective efforts of government, network providers and retailers to make mobile handset security can be made a priority for the manufacturers.

¹² Letter No.20-40/2006-BS-III(Pt.)/(Vol.1) Dated October 6, 2008.

¹³ Letter No.20-40/2006-BS-III (Pt.)(Vol.1) Dated September 3, 2009.

¹⁴ Ibid.

¹⁵ Ibid at 3.

¹⁶ Ibid at 11.

Conclusion

Mobile devices are becoming advanced microcomputer year on year. They contain a lot of personal data which can be misused, if it lands in unscrupulous hands. Therefore, a specific legislation making change of IMEI number by an unauthorized agency as an offence is need of the hour. Mobile manufacturers should be asked to make devices with permanent IMEI numbers so that they cannot be changed at all. A national level CEIR with access to all network providers managed by either DOT itself or by a third party under vigilance of DOT would also go a long way in making such devices safer. The implementation of prevalent law also needs to be improved to make them more effective. In fact, a joint effort of legislature, network providers, police, phone manufacturers and retailers can solve this menace.

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