GUYANA

BILL No.17 of 2016

CYBERCRIME BILL 2016

ARRANGEMENT OF SECTIONS

SECTION

PART III
ENFORCEMENT

A Bill
Intituled

AN ACT to combat cybercrime by creating offences of cybercrime; to provide for penalties, investigation and prosecution of the offences and related matters.

AD.2016

Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Cybercrime Act 2016.

Interpretation.

2. In this Act –

"child" means a person under the age of eighteen years;

"child pornography"-

(a) means material that visually depicts –

(i) a child engaging in real or simulated explicit sexual activity or conduct;

(ii) a child in a sexually explicit pose;

(iii) or presents, for sexual purposes, parts of a child's body pasted to visual representations of parts of an adult's body or vice versa,

"computer data storage medium" means anything –

(a) in which computer data is capable of being stored; or

(b) from which computer data is capable of being retrieved or reproduced,

with or without the aid of a computer system;

"computer programme" means computer data which represents instructions or statements that, when executed in a computer system, can cause the computer system to perform a function;

"computer system" –

(a) means a device or group of interconnected or related devices, which follows a computer programme or external instruction to perform automatic processing of computer data; and

(b) includes, but is not limited to, a desktop computer, a laptop computer, a netbook computer, a tablet computer, a video game console, a smart phone, a personal digital assistant, or a smart television;

"function" in relation to a computer system includes logic, control, arithmetic, deletion, storage or retrieval, and communication or telecommunication to, from or within a computer system;

"intercept" includes –

(a) listening to, viewing, or recording a function of a computer system; or

(b) acquiring the substance, meaning or purport of a function of a computer system,

by use of technical means;

"service provider" means-

(a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or

(b) any public or private entity that processes or stores computer data on behalf of such communication service or users of such service;

"subscriber information" means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services and by which can be established-

(a) the type of communication service used, the technical provisions taken and the period of service;

(b) the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on

the basis of the service agreement or arrangement;

(c) any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement;

"security measure" includes passwords, access codes and encryption codes;

"traffic data" means computer data that–

(a) relates to a communication by means of a computer system;

(b) is generated by a computer system that is part of a chain of communication; and

(c) shows the communication's origin, destination, route, time, date, size, duration or the type of underlying services.

PART II
CYBERCRIME OFFENCES

Illegal access to a computer system.

3. (1) A person commits an offence if the person intentionally, without authorisation or in excess of authorisation, or by infringing any security measure, accesses a computer system or any part of a computer system of another person.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of five million dollars and to imprisonment for five years.

Illegal interception.

4. (1) A person commits an offence if the person intentionally and without lawful excuse or justification, intercepts –

(a) the transmission of computer data or any communication of another person to, from or within a computer system; or

(b) any electromagnetic emission carrying computer data from a computer system.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to a fine of five million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Illegal data interference.

5. (1) A person commits an offence if the person intentionally and without lawful excuse or justification–

(a) causes computer data of another person to deteriorate;

(b) deletes computer data of another person;

(c) alters or modifies computer data of another person;

(d) copies or moves computer data of another person to a different location within a computer system or to any computer data storage medium;

(e) renders computer data of another person meaningless, useless or ineffective;

(f) obstructs, interrupts or interferes with another person's lawful use of computer data; or

(g) denies access to computer data to a person who is authorised to access it.

(2) A person who commits an offence under subsection (1), is liable–

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Illegal acquisition of data.

6. A person who, intentionally and without lawful excuse or justification, acquires computer data of another person commits an offence and is liable–

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Illegal system interference.

7. (1) A person commits an offence if the person intentionally and without lawful excuse or justification, hinders or interferes with –

(a) a computer system of another person; or

(b) another person's lawful use or operation of a computer system.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction to a fine of three million dollars and imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and imprisonment for five years.

(3) For the purposes of this section "hinder" includes–

(a) disconnecting the electricity supply to a computer system;

(b) causing electromagnetic interference to a computer system;

(c) corrupting a computer system; or

(d) damaging, deleting, deteriorating, altering or suppressing computer data.

Illegal devices.

8. (1) A person commits an offence if the person intentionally and without lawful excuse or justification, possesses, procures for use, produces, sells, imports, exports, distributes, discloses or otherwise makes available –

(a) a device or a computer programme, that is designed or adapted; or

(b) a computer password, access code, encryption code or similar data by which the whole or any part of a computer system, computer data storage medium or computer data is capable of being accessed,

for the purpose of committing an offence under this Act or any other law.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Unauthorised receiving, giving or obtaining of access to computer data.

9. (1) A person who is not authorised to receive or have access to computer data commits an offence if he intentionally and without lawful excuse or justification receives or gains access to computer data from another person, whether or not he knows that the other person obtained the computer data through authorised or unauthorised means.

(2) A person who is authorised to receive or have access to computer data commits an offence if that person intentionally and without lawful excuse or justification receives or gains access to computer data from another person knowing that the other person has obtained the computer data through unauthorised means.

(3) A person commits an offence if the person obtains computer data through authorised means and intentionally and without lawful excuse or justification, gives that computer data to another person who he knows is not authorised to receive or have access to the computer data.

(4) A person who commits an offence under this section is liable –

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Computer-related forgery.

10. A person who inputs, alters, deletes or suppresses computer data, resulting in inauthentic data, with the intent that it be considered or acted upon by another person as if it were authentic, regardless of whether or not the data is directly readable and intelligible, commits an offence and is liable–

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of five million dollars and to imprisonment for five years.

Computer-related fraud.

11. (1) A person commits an offence if the person –

(a) inputs, alters, deletes or suppresses computer data; or

(b) interferes with the functioning of a computer system,

with the intent to defraud or deceive another person for the purpose of procuring an economic benefit for himself or another person.

(2) A person who commits an offence under subsection (1) is liable–

(a) on summary conviction to a fine of five million dollars and to imprisonment for five years; or

(b) on conviction on indictment to a fine of ten million dollars and imprisonment for ten years.

Offences affecting critical infrastructure.

12. (1) Notwithstanding the penalties set out in any other provision of this Act or any other law, where a person commits an offence under this Act or under any other law and the offence results in the incapacity or destruction of or interference with, computer data, a computer system, or a computer network that–

(a) is exclusively for the use of critical infrastructure of the State; or

(b) affects the use, or impacts the operation, of critical infrastructure of the State,

that person is liable on conviction on indictment to a fine of twenty million dollars and to imprisonment for ten years.

(2) For the purposes of this section, "critical infrastructure" means any computer data, computer system, or computer network so vital to the State that the incapacity or destruction of, or interference with, such computer data, computer system, or computer network would have a debilitating impact on –

(a) the security, defence or international relations of the State;

(b) the existence or identity of a confidential source of information relating to the enforcement of the criminal law of the State;

(c) the provision of services by the Office of the Director of Public Prosecutions and the Ministry of Legal Affairs;

(d) confidential educational material, such as examination materials;

(e) the provision of services directly related to communications infrastructure, banking and financial services, public utilities, public transportation or essential public infrastructure such as hospitals, courts, traffic lights, bridges, airports and seaports;

(f) the protection of public safety, including systems related to essential emergency services such as police, fire brigade services, civil defence and medical services;

(g) the provision of services of the Revenue Authority established under the Revenue Authority Act; or

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(h) the provision of services of the Bank of Guyana.

Identity-related offences.

13. (1) A person commits an offence if the person uses a computer system to –

(a) transfer, possess or use a means of identification of another person; or

(b) make use of the electronic signature or password of another person,

with the intent to commit an offence under this Act or under any other law.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction to a fine of five million dollars and to imprisonment for three years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Child pornography.

14. (1) A person commits an offence if the person intentionally –

(a) produces child pornography for the purpose of its distribution through a computer system;

(b) offers or makes available, distributes or transmits child pornography through a computer system;

(c) procures or obtains child pornography through a computer system for himself or another person; or

(d) possesses child pornography in a computer system or on a computer data storage medium.

(2) A person who commits an offence under subsection (1), is liable –

(a) on summary conviction to a fine of ten million dollars and to imprisonment for five years; or

(b) on conviction on indictment to a fine of fifteen million dollars and to imprisonment for ten years.

Child luring.

15. (1) A person commits an offence if the person uses a computer system to -

(a) communicate with a child with the intent to induce the child to engage in sexual conversations or sexual activities; or

(b) arrange a meeting with a child with the intent of abusing or engaging in sexual activity with the child or producing child pornography, whether or not he takes any steps to effect such a meeting.

(2) A person who commits an offence under subsection (1) is liable –

(a) on summary conviction to a fine of three million dollars and to imprisonment for five years; or

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Publication or transmission of image of private area of a person.

16. (1) A person commits an offence if the person intentionally captures, stores in, publishes or transmits through a computer system, the image of the private area of another person without that other person's consent.

(2) A person who commits an offence under subsection (1), is liable –

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; and

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

(3) For the purposes of this section, "private area" means the genitals, buttocks or breast.

Multiple electronic mail messages and fraudulent website.

17. (1) A person commits an offence if the person –

(a) intentionally initiates the transmission of multiple electronic mail messages from or through a computer system; or

(b) with intent to deceive or mislead a recipient or service provider as to the origin of the message, uses a computer system to transmit or retransmit multiple electronic mail messages,

that causes harm to a person or damage to a computer system.

(2) A person commits an offence if the person intentionally falsifies the header information of an electronic mail message for the purpose of committing an offence under subsection (1).

(3) A person commits an offence if the person without lawful excuse or justification establishes a website, with the intent to deceive or mislead a visitor to the website as to the authenticity of the website, for the purpose of gaining unauthorised access to information to commit a further offence.

(4) A person who commits an offence under this section is liable–

(a) on summary conviction to a fine of three million dollars and to imprisonment for three years; and

(b) on conviction on indictment to a fine of five million dollars and to imprisonment for five years.

(5) For the purposes of this section, "multiple electronic mail messages" means unsolicited data messages, including electronic mail and instant messages sent to more than fifty recipients within twenty-four hours.

Offences of sedition.

18. (1) A person commits an offence of sedition if the person, whether in or out of Guyana, intentionally publishes, transmits or circulates by use of a computer system or any other means, a statement or words, either spoken or written, a text, video, image, sign, visible representation, or other thing, that –

(a) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in Guyana;

(f) excites or attempts to excite ethnic divisions among the people of Guyana or hostility or ill-will against any person or class of persons on the ground of race.

(2) A person who commits an offence under subsection (1) shall be liable on conviction on indictment to imprisonment for five years.

(3) Where death of the President, Prime Minister or any Minister of the Government or any other person occurs as a result of the commission of an offence under subsection (1), the person who commits the offence is liable on conviction on indictment to imprisonment for life.

(4) For the purposes of subsection (1) –

(a) "disaffection" includes disloyalty and all feelings of enmity;

(b) the following do not constitute an offence under subsection (1) -

(i) comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without, exciting or attempting to excite hatred, contempt or disaffection;

(ii) comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection;

(iii) comments that the President, Prime Minister or any Minister of the Government or the Government has been misled or mistaken in their measures;

(iv) comments that point out errors or defects in the Government, Constitution or Parliament;

(v) comments that procure, by lawful means, the alteration of any matter of government; and

(vi) comments that point out, for the purpose of removal, matters that produce or tend to produce feelings of hostility and ill-will between different classes of persons in Guyana.

Using a computer system to coerce, harass, intimidate, humiliate, etc. a person.

19. (1) A person commits an offence if the person, with intent to compel another person to do any act which the other person is not legally bound to do or to abstain from doing any act which the other person has a legal right to do, uses a computer system to publish or transmit computer data that –

(a) intimidates the other person; or

(b) threatens the other person to use violence to him or a member of his family or injure his property.

(2) A person commits an offence if he uses a computer system –

(a) to publish or transmit computer data that is obscene,

vulgar, profane, lewd, lascivious or indecent with intent to humiliate, harass or cause substantial emotional distress to another person; or

(b) to repeatedly send to another person computer data that is obscene, vulgar, profane, lewd, lascivious or indecent with intent to humiliate or harass the other person to the detriment of that person's health, emotional well-being, self-esteem or reputation.

(3) A person commits an offence if the person uses a computer system to disseminate any information, statement or image, knowing the same to be false, that –

(a) causes damage to the reputation of another person; or

(b) subjects another person to public ridicule, contempt, hatred or embarrassment.

(4) A person who uses a computer system with the intent to extort a benefit from another person by threatening to publish computer data containing personal or private information which can cause the other person public ridicule, contempt, hatred or embarrassment commits an offence.

(5) A person who commits an offence under this section is liable–

(a) on summary conviction to a fine of five million dollars and to imprisonment for three years; and

(b) on conviction on indictment to a fine of ten million dollars and to imprisonment for five years.

(6) In subsection (1) –

(a) "intimidate" means –

(i) to cause in the mind of a reasonable person an apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property; or

(ii) to cause a person substantial emotional distress; and

(b) "injury" includes injury to a person in respect of his business, occupation, employment or other source of income, and includes an actionable wrong.

Infringement of copyright, patents and designs and trademarks.
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20. A person who uses a computer system to infringe –

(a) the rights of the copyright owner under the Copyright Act 1956 as applied to Guyana with certain exceptions and modifications to form part of the law of Guyana by the Copyright (British Guiana) Order, 1966;

S.I. No. 79 of 1966

(b) the rights of the proprietor of the patent or the rights of the proprietor of a registered design under the Patents and Designs Act; or

Cap. 90:03

(c) the rights of the proprietor of a registered trade mark under the Trade Marks Act,

Cap. 90:01

commits an offence and is liable on summary conviction to a fine of three

million dollars and imprisonment for three years.

Corporate liability.

21. (1) Where a body corporate commits an offence under this Act, the body corporate is liable to the fine applicable in respect of the offence.

(2) Where a body corporate commits an offence under this Act and the court is satisfied that a director, manager, secretary, or other similar officer, of that body corporate-

(a) consented or connived in the commission of the offence; or

(b) failed to exercise due diligence to prevent the commission of the offence,

that director, manager, secretary, or other similar officer commits an offence.

(3) A person who commits an offence under subsection (2) is liable -

(a) on summary conviction to a fine of five million dollars and to imprisonment for three years; and

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

Attempt, aiding or abetting.

22. A person who intentionally –

(a) advises, incites, attempts, aids, abets, counsels, procures or facilitates the commission of any offence under this Act; or

(b) conspires with another person to commit an offence under

this Act,

commits an offence and shall be punished for the offence as if he had committed the offence as a principal offender.

Use of computer system to commit offence under any other law.

23. Where an offence under any other law, not provided for in this Act, is capable of being committed by a person through the use of a computer system, that other law shall be deemed to provide that the offence may be committed by a person through the use of a computer system and a person who commits the offence through the use of a computer system shall be liable to a fine of four times the monetary penalty provided by that law and to the same custodial sentence.

Offences prejudicing investigation.

24. (1) A person who knows or has reasonable grounds to believe that an investigation in relation to an offence under this Act is being or is about to be conducted, commits an offence if he intentionally -

(a) makes a disclosure that is likely to prejudice the investigation; or

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents or computer data that are relevant to the investigation.

(2) A person does not commit an offence under subsection (1)(a) if-

(a) the person does not know or have reasonable grounds to

believe that the disclosure is likely to prejudice the investigation;

(b) the disclosure is made in the exercise of a function under this Act or in compliance with a requirement imposed under or by virtue of this Act;

(c) the person is an attorney-at-law and the disclosure is -

(i) to a client in connection with the giving of legal advice to the client; or

(ii) to any person in connection with legal proceedings or contemplated legal proceedings,

but a disclosure does not fall within this paragraph if the disclosure is made with the intention of furthering a criminal purpose.

(3) A person does not commit an offence under subsection (1)(b) if the person –

(a) does not know or suspect that the documents or computer data are relevant to the investigation; or

(b) does not intend to falsify, conceal, destroy or otherwise dispose of any facts disclosed by the documents or computer data from any official carrying out the investigation.

(4) A person who commits an offence under subsection (1) is liable-

(a) on summary conviction to a fine of five million dollars

and to imprisonment for three years; and

(b) on conviction on indictment to a fine of eight million dollars and to imprisonment for five years.

PART III
ENFORCEMENT

Service providers to store traffic data and subscriber information.

25. (1) Subject to subsection (2), a service provider shall store traffic data of subscribers for ninety days from the date on which the data is generated by a computer system.

(2) A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that traffic data is reasonably required for the purpose of a criminal investigation or criminal proceedings under this Act or any other law, may order a service provider to store traffic data of subscribers for a period of more than ninety days but not exceeding one year on a special case by case basis.

(3) The service provider shall keep subscriber information from the beginning of the service provision, and such information shall be kept for a period of ninety days after the service agreement has ended.

(4) A service provider who fails to comply with this section commits an offence and is liable on summary conviction to a fine of three million dollars and to imprisonment for one year.

Extension of time for prosecution of an offence.

26. Notwithstanding the provisions of any written law prescribing the time within which proceedings for an offence punishable on summary conviction may be commenced, summary proceedings for an offence against this Act, or for attempting to commit, conspiring with another person to commit, or soliciting, inciting, aiding, abetting or counselling or causing or procuring the commission of, such an offence, or for attempting to solicit, incite, aid, abet, counsel or cause or procure the commission of such an offence, may be commenced within twelve months of the commission of the offence:

Provided that where an offence against this Act is punishable on summary conviction and on conviction on indictment, nothing in this section shall be deemed to restrict the power to commence, after the expiry of the aforesaid period of twelve months, proceedings for conviction on indictment for that offence or for any other act, relating to the offence, referred to in this section.

Jurisdiction.

27. (1) A court in Guyana shall have jurisdiction in respect of an offence under this Act where the act constituting the offence is carried out–

(a) wholly or partly in Guyana;

(b) by a citizen of Guyana, whether in Guyana or elsewhere; or

(c) by a person on board a vessel or aircraft registered in Guyana.

(2) For the purposes of subsection (1)(a), an act is carried out in Guyana if–

(a) the person is in Guyana at the time when the act is committed;

(b) the person is outside of Guyana at the time when the act is committed, but –

(i) a computer system located in Guyana or computer data on a computer data storage medium located in Guyana is affected by the act; or

(ii) the effect of the act, or the damage resulting from the act, occurs within Guyana.

(3) Subject to subsection (1), a Magistrate's court has jurisdiction to hear and determine any offence under this Act, if–

(a) the accused was within the magisterial district at the time when he committed the offence;

(b) a computer system, containing any computer programme or computer data which the accused used, was within the magisterial district at the time when the accused committed the offence; or

(c) damage occurred within the magisterial district, whether or not paragraph (a) or (b) applies.

Search and seizure.

28. (1) A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that there are reasonable grounds for suspecting that-

(a) an offence under this Act has been or is about to be committed in any place; and

(b) evidence that such an offence has been or is about to be committed is in that place,

may issue a warrant authorising a police officer, with such assistance as may be necessary, to enter the place to search for and seize the evidence, including any computer system, computer data storage medium or computer data.

(2) If a police officer who is undertaking a search under this section has reasonable grounds to believe that–

(a) the computer data sought is stored in another computer system or computer data storage medium; or

(b) part of the computer data sought is in another place within Guyana,

and such computer data is lawfully accessible from or available to the first computer system or computer data storage medium, the police officer may extend the search and seizure to that other computer system, computer data storage medium or other place.

(3) In the execution of a warrant under this section, a police officer may, in addition to the powers conferred on him by the warrant–

(a) activate an onsite computer system or computer data storage medium;

(b) inspect and check the operation of a computer system or computer data storage medium;

(c) make and retain a copy of computer data;

(d) remove computer data from a computer system or render the computer system inaccessible;

(e) take a printout of output of computer data;

(f) impound or similarly secure a computer system or part of it or a computer data storage medium.

(4) A police officer who undertakes a search under this section shall secure any computer system or computer data storage medium and maintain the integrity of the computer data that is seized.

(5) The seizure of any evidence, including any computer system, computer data storage medium or computer data under this section shall be valid for a period of ninety days and may be extended for a further period of not more than one year by a Judge in Chambers.

(6) When the seizure is no longer necessary, or upon its expiry date, any computer system, computer data storage medium or computer data seized shall be immediately returned to the person to whom the warrant was addressed.

Record of seized material.

29. (1) If a computer system or computer data storage medium is seized or rendered inaccessible in the execution of a warrant under section 28, the person who executed the warrant shall, at the time of the execution, or as soon as possible thereafter-

(a) make a list of what has been seized or rendered inaccessible, with the date and time of seizure; and

(b) give a copy of that list to –

(i) the person to whom the warrant is addressed; or

(ii) the occupier of the premises on which the warrant is executed.

(2) A person, who immediately before the execution of a warrant, had possession or control of a computer system or a computer data storage medium seized, may request a copy of computer data from the police officer who executed the warrant, and the police officer shall, as soon as is reasonably practicable, comply with the request.

(3) Notwithstanding subsection (2), a police officer who seizes a computer system or computer data storage medium may refuse to provide a copy of computer data if he has reasonable grounds for believing that providing a copy would-

(a) constitute or facilitate the commission of a criminal offence; or

(b) prejudice-

(i) the investigation in relation to which the warrant was

issued;

(ii) another ongoing investigation; or

(iii) any criminal proceedings that may be brought in relation to any investigation mentioned in subparagraph (i) or (ii).

Assistance.

30. (1) A person who has knowledge about the functioning of a computer system or computer data storage medium, or security measures applied to protect computer data, that is the subject of a search warrant shall, if requested by the police officer authorised to undertake the search, assist the police officer by –

(a) providing information that facilitates the undertaking of the search for and seizure of the computer system, computer data storage medium or computer data sought;

(b) accessing and using the computer system or computer data storage medium to search computer data which is stored in, or lawfully accessible from or available to, that computer system or computer data storage medium;

(c) obtaining and copying computer data; or

(d) obtaining an intelligible output from a computer system or computer data storage medium in such a format that is

admissible for the purpose of legal proceedings.

(2) A person who fails, without lawful excuse or justification, to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of three million dollars and to imprisonment for one year.

Production order.

31. A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that computer data, traffic data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings under this Act or any other law, may order–

(a) a person in Guyana who is in possession or control of a computer system or computer data storage medium, to produce, from the computer system or computer data storage medium, specified computer data or a printout or other intelligible output of the computer data; or

(b) a service provider in Guyana to produce traffic data relating to information transmitted from a subscriber through a computer system or from other relevant persons, or subscriber information about a person who uses the service,

and give it to a specified person within a specified period.

Expedited preservation order.

32. (1) A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that there are reasonable grounds to believe that computer data or traffic data that is reasonably required for the purpose of a criminal investigation, under this Act or any other law, is vulnerable to loss or modification, may make an order requiring a person in possession or control of computer data or traffic data to preserve and maintain the integrity of the computer data or traffic data for a period not exceeding ninety days.

(2) A Judge, on an *ex parte* application by a police officer of the rank of Superintendent or above, may order an extension of the period referred to in subsection (1) by a further specified period of ninety days or more but not exceeding one year on a special case by case basis.

Disclosure of traffic data order.

33. A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that there are reasonable grounds to believe that traffic data stored in a computer system or a computer data storage medium is reasonably required for the purpose of a criminal investigation, under this Act or any other law, into a communication, may make an order requiring a person to disclose sufficient traffic data about the communication to identify –

(a) the service provider; or

(b) the path,

through which the communication was transmitted.

Confidentiality of order.

34. (1) A person who is the subject of an order under section 31, 32 or 33 shall keep confidential-

(a) the fact that an order has been made;

(b) the details of an order;

(c) anything done pursuant to an order; or

(d) any computer data collected or recorded pursuant to an order.

(2) A person who intentionally and without lawful excuse or justification fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

Prohibition of disclosures.

35. (1) Except as provided in subsection (2), a person shall not disclose or deliver computer data, traffic data or subscriber information or any other information acquired in the course of their duties under this Act to any other person.

(2) The provisions under subsection (1) shall not apply to any actions between a service provider and any other person permitted under any law, or performed for the benefit of investigating or prosecuting a person who has committed an offence under this Act.

(3) Any person who violates subsection (1) commits an offence and shall be liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

Protection of person aiding in enforcement of Act.

36. A person or service provider shall not be liable under a civil or criminal law for any actions taken or the disclosure of any computer data or other information that may be disclosed pursuant to the enforcement of this Act.

Order for removal or disablement of data.

37. A Judge, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above that a service provider or any other entity with a domain name server is storing, transmitting or providing access to computer data in contravention of this Act or any other written law, may order the service provider or other entity with a domain name server to remove, or disable access to, the computer data.

Remote forensic tools.

38. (1) Where a Judge is satisfied on *ex parte* application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under this Act or any other law, cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer, with such assistance as may be necessary, to utilise

a remote forensic tool for the investigation.

(2) An application made under subsection (1) shall contain the following information-

(a) the name, and if possible, the address, of the person who is suspected of committing the offence;

(b) a description of the targeted computer system;

(c) a description of the required tool, the extent and duration of its utilisation; and

(d) reason for the use of the tool.

(3) Where an application is made under subsection (1), the Judge may order that a person or a service provider support the installation of the remote forensic tool.

(4) Where a remote forensic tool is utilised under this section –

(a) modifications to a computer system shall be limited to those that are necessary for the investigation;

(b) modification to a computer system shall be undone, so far as possible, after the investigation; and

(c) the police officer authorised under subsection (1) shall, as soon as possible thereafter, prepare a record of –

(i) the remote forensic tool used;

(ii) the time and date of the application;

(iii) the identification of the computer system and

details of the modification undertaken; and

(iv) the information obtained.

(5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access.

(6) An authorisation that is granted under this section shall cease to apply where -

(a) the computer data sought is collected;

(b) there is no longer any reasonable ground for believing that the computer data sought exists; or

(c) the conditions of the authorisation are no longer present.

(7) For the purposes of this section, "remote forensic tool" means an investigative software or hardware installed on or attached to a computer system that is used to perform a task.

Order for payment of compensation.

39. (1) Where a person is convicted of an offence under this Act and the court is satisfied that another person has suffered loss or damage because of the commission of the offence, the court may, in addition to any penalty imposed under this Act, order the person convicted to pay a fixed sum as compensation to that other person for the loss or damage caused as a result

of the commission of the offence.

(2) An order made under subsection (1) shall be without prejudice to any other remedy which the person who suffered the loss or damage may have under any other law.

(3) The court may make an order under subsection (1) of its own motion or upon the application of a person who has suffered loss or damage as a result of the commission of the offence.

(4) A person who makes an application under subsection (3) shall do so in accordance with rules of court before sentence is passed on the person against whom the order is sought.

Forfeiture order.

40. (1) Subject to subsection (2), where a person is convicted of an offence under this Act, the court that heard the criminal case may, upon the application of the Director of Public Prosecutions, order that any property–

(a) used for or in connection with; or

(b) obtained as a result of or in connection with,

the commission of the offence be forfeited to the State.

(2) Before making an order under subsection (1), the court shall give an opportunity to be heard to any person who-

(a) claims to be the owner of the property; or

(b) appears to the court to have an interest in the property.

(3) Property forfeited to the State under subsection (1) shall vest in the State –

(a) if no appeal is made against the forfeiture order, at the end of the period within which an appeal may be made against the forfeiture order; or

(b) if an appeal has been made against the forfeiture order, on the final determination of the matter, where the decision is made in favour of the State.

(4) Where property is forfeited to the State under this section, it shall be disposed of in such manner as the court orders.

Order for seizure and restraint regarding forfeiture.

41. Where an *ex parte* application is made by the Director of Public Prosecutions to a Judge and the Judge is satisfied that there are reasonable grounds to believe that there is in any building, place or vessel, any property in respect of which a forfeiture order under section 40 has been made, the Judge may issue–

(a) a warrant authorising a police officer to search the building, place or vessel for that property and to seize –

(i) that property if found; and

(ii) any other property in respect of which the police

officer believes, on reasonable grounds, that a forfeiture order under section 40 ought to have been made; or

(b) a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property, other than as may be specified in the restraint order.

Failure to comply with a court order.

42. If any person fails to comply with an order of the Court, the person commits an offence and shall be liable –

(a) to a fine of one million dollars and to imprisonment for one year; and

(b) a further daily fine for each day the offence continues, of not more than fifty thousand dollars until the relevant corrective action has been taken.

Evidence.

43. In any criminal proceeding under this Act or any other law –

(a) any computer data or traffic data, generated, retrieved or reproduced from a computer system or from a computer data storage medium, and whether in electronic or printed form; or

(b) any computer system or computer data storage medium,

acquired in respect of any offence, shall be admissible as evidence.

EXPLANATORY MEMORANDUM

This Bill seeks to combat cybercrime by creating offences related to cybercrime; to provide for penalties, investigation and prosecution of the offences and related matters.

Part I

Part I gives the definition to a number of words and terms that are used throughout the Bill.

Part II

Part II (Clauses 3 to 24) identifies and establishes the cybercrime offences.

Clause 3 states that a person commits an offence if he intentionally, without authorisation or in excess of authorisation, or by infringing any security measure, accesses a computer system or any part of a computer system of another person.

Clause 4 makes it an offence for a person to intercept the transmission of computer data or any electromagnetic emission from a computer system that carries any data.

Clause 5 makes data interference an offence and **clause 6** provides that a person who, intentionally and without lawful excuse or justification, acquires, computer data of another person commits an offence.

Clause 7 makes interfering with another person's computer system or another person's lawful use or operation of a computer system an offence.

Clause 8 provides that a person who, intentionally and without lawful excuse or justification, possesses, produces, sells...or otherwise makes available a device or a computer programme, a computer password, access code, encryption code or similar data by which the whole or any part

of a computer system, computer data storage medium or computer data is capable of being accessed, for the purpose of committing an offence under this Act or any other law, commits an offence.

Clause 9 provides different scenarios under which an authorised person or an unauthorised person can commit an offence with regards to receiving computer data.

Clauses 10 and 11 deal with computer-related forgery and computer-related fraud. A person who, intentionally and without lawful excuse or justification, inputs, alters, deletes or suppresses computer data, resulting in inauthentic data, with the intent that it be considered or acted upon by another person as if it were authentic, regardless of whether or not the computer data is directly readable and intelligible, commits computer-related forgery. A person who intentionally and without lawful excuse or justification inputs, alters, deletes or suppresses computer data or interferes with the functioning of a computer system with the intent to defraud or deceive another person for the purpose of procuring an economic benefit for himself or another person commits computer-related fraud.

Clause 12 provides that if any offence is committed under the Act or any other written law and that offence results in hindering or interference with computer data, a computer system or a computer network that is for the use of a critical infrastructure that person is liable on conviction on indictment to a fine of twenty million dollars and imprisonment for ten years. Critical infrastructure includes computer data, computer system or a computer network used for, the security, defence or international relations of Guyana, banking and financial services, etc.

Clause 13 provides that a person commits an offence if the person uses a computer system to transfer, possess or use a means of identification of another person, with the intent to commit an offence under this Act or any other law commits an offence.

Clauses 14 and 15 deal with child pornography and child luring. A person who produces child pornography for the purpose of distribution through a computer system, or offers or makes available, distributes or transmits child pornography through a computer system commits an offence. A person who uses a computer system to arrange a meeting with a child with the intent of abusing or engaging in sexual activity with the child or producing child pornography, whether or not he takes any steps to effect such a meeting, commits child luring.

Clause 16 addresses the publication or transmission of images of the private area of a person. A person who captures, stores in, publishes or transmits through a computer system, the image of the private area of another person without that other person's consent commits an offence.

Clause 17 makes it an offence for a person to use a computer system to transmit or retransmit multiple electronic mail messages with the intent to deceive or mislead a recipient or service provider as to the origin of the message, thereby causing harm to a person or damage to a computer system.

Clause 18 provides for the use of a computer system to commit offences of sedition. For instance, a person commits the offence of sedition if the person, whether in or out of Guyana, publishes, transmits or circulates by use of a computer system or any other means, a statement or words, either spoken or written, text, video, image, sign, visible representation, or other thing, that –

(a) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in Guyana; or

(b) encourages, incites, induces, aids, abets, counsels any person to commit or to conspire with another person to commit any criminal offence against the President, Prime Minister or any Minister of the Government established by law in Guyana.

The penalty for the offences is imprisonment for five years, but where death of the President, Prime Minister or any Minister or any other person occurs the penalty is imprisonment for life.

Clause 19 deals with the use of a computer system to harass, intimate, coerce, etc. a person. A person who uses a computer system to disseminate false information about another person which damages the reputation of that other person or subjects the other person to public ridicule, contempt, hatred or embarrassment, commits an offence. Also, a person who uses a computer system with the intent to extort a benefit from another person by threatening to publish computer data containing personal or private information which can cause public ridicule, contempt, hatred or embarrassment to that other person commits an offence.

Clause 20 addresses the infringement of copyright, patent and designs and trademarks through the use of a computer system.

Clause 21 addresses corporate liability.

Clause 22 provides that a person who intentionally advises, incites, attempts, aids, abets, counsels, procures or facilitates the commission of any offence under the Act, or conspires with

another person to commit an offence under the Act, commits an offence and shall be punished for the offence as if he had committed the offence as a principal offender.

Clause 23 provides that where an offence under any other law is committed by a person through the use of a computer system, that person shall be liable to a fine of four times the monetary penalty provided by that other law and to the same custodial sentence in that other law.

Clause 24 states that a person who knows or has reasonable grounds to believe that an investigation in relation to an offence under the Act is being or is about to be conducted, that person commits an offence if he intentionally makes a disclosure that is likely to prejudice the investigation or falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents or computer data that are relevant to the investigation.

The penalties stated in the draft Bill aim to be in harmony with those of other CARICOM member States and to provide a strong deterrent to a person who commits an offence under the draft Bill. The penalties range from a fine of three million dollars and to imprisonment for three years for less serious offences to a fine of twenty million dollars and to imprisonment for ten years for more serious offences.

Part III

Part III (Clauses 25 to 43) of the Bill provides for the enforcement of offences under the Act.

Clause 25 provides that service providers shall store traffic data for ninety days from the date on which the data is generated by a computer system. It also provides for the circumstances under which the period of storage may be extended.

Clause 26 extends the time within which proceedings for an offence punishable on summary conviction may be commenced.

Clause 27 provides the different scenarios under which the courts of Guyana shall have jurisdiction in relation to an offence under the Act.

Clause 28 makes provision for a police officer of the rank of Superintendent or above to make an *ex parte* application to a Judge for a search and seizure warrant to enter any place to search for and seize evidence, including any computer system, computer data storage medium or computer data, for the purpose of establishing an offence under the Act.

Clause 29 requires a police officer executing a search and seizure warrant to keep a record of any material that may have been seized or rendered inaccessible, and provide a copy of the record to the person to whom the warrant is addressed or the occupier of the premises on which the warrant is executed.

It also provides for the circumstances under which a police officer may provide or refuse to provide a copy of seized material.

Clause 30 requires persons who have knowledge about the functioning of a computer system, computer data storage medium or any security measures applied to protect computer data that is the subject of a search and seizure warrant, to render assistance to facilitate the execution of the warrant upon the request of the police officer. It also provides that failure to render assistance without lawful excuse or justification is an offence.

Clause 31 gives a Judge the power to make a production order, upon the *ex parte* application of a police officer of the rank of Superintendent or above, for computer data, traffic data or

subscriber information required for the purpose of a criminal investigation or criminal proceedings.

Clause 32 gives a Judge the power to order the expedited preservation of computer or traffic data related to a criminal investigation where there are reasonable grounds to believe that the data may be vulnerable to loss of modification.

Clause 33 provides that a Judge may make an order for the partial disclosure of traffic data for the purpose of a criminal investigation into a communication.

Clause 34 requires persons who are the subjects of certain orders made under the Act to keep confidential all information relating to the orders, and seeks to impose liability on persons who disclose the details of the order without any lawful excuse of justification.

Clause 35 provides that a person shall not disclose or deliver computer data, traffic data or subscriber information or any other information acquired in the course of their duties under this Act to any other person subject to certain exceptions.

Clause 36 seeks to exempt any person or service provider from civil or criminal liability for any actions taken or disclosures made pursuant to the enforcement of the Act.

Clause 37 gives a Judge the power to order a service provider or any other entity with a domain name server to remove or disable access to computer data that is being stored or transmitted in contravention of the Act.

Clause 38 provides that a Judge may authorise a police officer of the rank of Superintendent or above, to utilise remote forensic tools for the purpose of a criminal investigation into an offence

under this Act or any other law, where there are reasonable grounds to believe that evidence cannot be collected without the use of remote forensic tools.

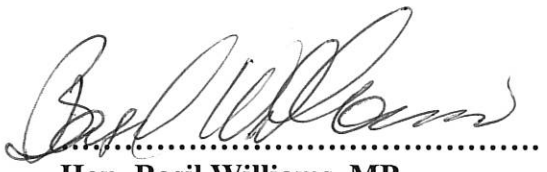
Clause 39 provides that the court may order a person convicted under the Act to pay an additional fixed sum of compensation where another person has suffered loss or damage as a result of the commission of the offence.

Clause 40 provides for the procedure under which the Court may make a forfeiture order in respect of property used for, or in connection with, or obtained as a result of the commission of an offence under the Act.

Clause 41 provides that a Judge may issue a search and seizure warrant and a restraint order to prohibit disposal of any property in respect of which a forfeiture order was made.

Clause 42 addresses the failure to comply with a court order.

Clause 43 addresses the admissibility as evidence of a computer system, computer data storage medium, computer data or traffic data.



Hon. Basil Williams, MP
Attorney General and Minister of Legal Affairs