COMPUTER MISUSE

ARRANGEMENT OF SECTIONS

SECTION

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SECTION

COMPUTER MISUSE

An Act to make provision for the protection of computer systems and the information contained in those systems from unauthorised access, from abuse by persons authorised to have access and related matters. 2005-4.

[18th July, 2005] 2005/86.

PART I

PRELIMINARY

1. This Act may be cited as the *Computer Misuse Act*. Short title.

2. This Act applies to an act done or an omission made Application.

(a) in Barbados;

(b) on a ship or aircraft registered in Barbados; or

(c) by a national of Barbados outside the territory of Barbados, if the person's conduct would also constitute an offence under the law of a country where the offence was committed.

3. (1) In this Act Interpretation.

"computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a programme suitable to cause a computer system to perform a function;

"computer data storage medium" means any article or material from which information is capable of being reproduced, with or without the aid of any other article or device;

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"computer system" means a device or a group of inter-connected or related devices, including the Internet, one or more of which, pursuant to a programme, facilitates communication, performs automatic processing of data or any other function;

"damage" includes

(a) any impairment to a computer or the integrity or availability of any data or programme held in a computer;

(b) the impairment of the confidentiality of information held in a computer;

"electronic, acoustic, mechanical or other device" means any device or apparatus that is used or capable of being used to intercept any function of a computer;

"intercept" includes, in relation to a computer, listening to or recording a function of a computer, or acquiring the substance, meaning or purport of the function;

"programme or computer programme" means data or a portion of data representing instructions or statements that, when executed in a computer, causes the computer to perform a function;

"service provider" means

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

(b) any other entity that processes or stores computer data on behalf of that entity or those users;

"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 origin, destination, route, time, date, size, duration of the communication of the type of underlying services used to generate the data.

(2) For the purposes of this Act, access of any kind by any person to any programme or data held in a computer is unauthorised or obtained without authority if

(a) the person is not entitled to access of the kind in question to the programme or data; and

(b) the person

(i) does not have permission to access the programme or data; or

(ii) exceeds any right or permission to access the programme or data

from any person who may permit such access.

(3) A reference in this Act to any "programme or data" held in a computer includes a reference to

(a) any programme or data held in any removable storage medium which is for the time being in the computer; or

(b) any programme or data held in any storage medium which is external to the computer, but which is connected to it.

(4) For the purposes of this Act, a modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or of any other computer

(a) any programme or data held in the computer is altered or erased;

(b) any programme or data is added to any programme or data held in the computer; or

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(c) any act occurs which impairs the normal operation of any computer,

and any act which contributes towards such a modification shall be regarded as causing it.

(5) Any modification referred to in subsection (4) is unauthorised if the person whose act causes the modification

(a) is not entitled to determine whether the modification should be made; and

(b) has not obtained the consent of the person who is entitled to consent to the modification.

(6) A reference in this Act to a programme includes a reference to a part of a programme.

PART II

PROHIBITED CONDUCT

Illegal access.

4. (1) A person who knowingly or recklessly, and without lawful excuse or justification,

(a) gains access to the whole or any part of a computer system;

(b) causes a programme to be executed;

(c) uses the programme to gain access to any data;

(d) copies or moves the programme or data

(i) to any storage medium other than that in which that programme or data is held; or

(ii) to a different location in the storage medium in which that programme or data is held; or

(e) alters or erases the programme or data

is guilty of an offence and is liable on conviction on indictment to a fine of $25 000 or to imprisonment for a term of 2 years or to both.

(2) For the purposes of subsection (1), the form in which any programme is obtained or copied and, in particular, whether or not it represents a form in which it is capable of being executed, is immaterial.

Interfering with data.

5. (1) A person who knowingly or recklessly, and without lawful excuse or justification,

(a) destroys or alters data;

(b) renders data meaningless, useless or ineffective;

(c) obstructs, interrupts or interferes with the lawful use of data;

(d) obstructs, interrupts or interferes with any person in the lawful use of data; or

(e) denies access to data to any person entitled to the data;

is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

(2) Subsection (1) applies whether the person's act is of temporary or permanent effect.

Interfering with computer system.

6. A person who knowingly or recklessly, and without lawful excuse or justification,

(a) hinders the functioning of a computer system by

(i) preventing the supply of electricity, permanently or otherwise, to a computer system;

(ii) causing electromagnetic interference to a computer system;

(iii) corrupting the computer system by any means;

(iv) adding, deleting or altering computer data; or

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(b) interferes with the functioning of a computer system or with a person who is lawfully using or operating a computer system

is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

Illegal interception of data etc.

7. A person who knowingly and without lawful excuse or justification intercepts by technical means

(a) any transmission to, from or within a computer system that is not available to the public; or

(b) electromagnetic emissions that are carrying computer data from a computer system

is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

Illegal devices.

8. A person who knowingly or recklessly, and without lawful excuse or justification,

(a) supplies, distributes or otherwise makes available

(i) a device, including a computer programme, that is designed or adapted for the purpose of committing an offence under section 4, 5, 6 or 7; or

(ii) a computer password, access code or similar data by which the whole or any part of a computer system is capable of being accessed, with the intent that it be used by any person for the purpose of committing an offence under section 4, 5, 6 or 7; or

(b) has an item mentioned in paragraph *(a)*(i) or (ii) in his possession with the intent that it be used by any person for the purpose of committing an offence under section 4, 5, 6 or 7

is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

Access with intention to commit offence.

9. A person who knowingly uses a computer to perform any function in order to secure access to any programme or data held in that computer or in any other computer with the intention to commit an offence involving property, fraud or dishonesty is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

Unauthorised disclosure of access code.

10. (1) A person who knowingly and without authority discloses any password, access code or any other means of gaining access to any programme or data held in a computer is guilty of an offence and is liable on summary conviction to a fine of $10 000 or to imprisonment for a term of 12 months or to both and, in the case of a second or subsequent conviction, to a fine of $20 000 or to imprisonment for a term of 2 years or to both

(2) A person who knowingly and without authority discloses any password, access code or any other means of gaining access to any programme or data held in a computer

(a) for any unlawful gain, whether to himself or to another person;

(b) for an unlawful purpose; or

(c) knowing that it is likely to cause unlawful damage

is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both and, in the case of a second or subsequent conviction, to a fine of $100 000 or to imprisonment for a term of 7 years or to both.

Offences involving restricted computer systems.

11. (1) Where a person who does not possess the relevant authorisation for gaining access to a restricted computer system

(a) gains access to the system, that person is guilty of an offence and is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both;

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(b) gains access to a restricted computer system in the course of the commission of an offence under section 4, 5, 6 or 7, the person convicted of that offence is, in lieu of the penalty prescribed in those sections, liable, on conviction on indictment, to a fine of $100 000 or to imprisonment for a term of 7 years or to both.

(2) It is a defence to a charge brought under subsection (1) to prove that access to a restricted computer system was obtained inadvertently and with no intent to commit an offence.

(3) For the purposes of subsection (1), a "restricted computer system" means any system or part of a system belonging to the entities set out in the *Schedule*, that is not available for access to the public and in respect of which notice of the restriction is given

Schedule.

(a) in the *Official Gazette* and in a newspaper published daily in Barbados; and

(b) on a computer at the time when the attempt is made to gain access to the system.

Schedule.

(4) The Minister may by order amend the *Schedule* by adding to or deleting from the list of entities set out in the *Schedule*.

Unauthorised receiving or giving of access to computer programme or data.

12. (1) Where a person who is not authorised

(a) to have a programme or computer data; or

(b) to have access to any programme or data held in a computer

receives or is given access to that programme or data, he is guilty of an offence whether or not the person from whom the programme or data was received or through whom access was attained was authorised to make it available to him.

(2) A person who is authorised to receive a programme or computer data or to have access to any programme or data held in a computer is guilty of an offence where he receives the programme or data or access thereto knowing that the person from whom he received the programme or data or from whom he received the access obtained it through unauthorised means.

(3) A person who has obtained any programme or computer data or programme or data held in a computer through authorised means is guilty of an offence where he gives that programme or data to another person who he knows is not authorised to receive or have access to that programme or data.

(4) A person is guilty of an offence where he obtains any programme or data held in a computer through unauthorised means and gives the programme or data to another person, whether or not he knows that the person to whom he has given the programme or data is authorised to receive or have access to that programme or data.

(5) A person who is guilty of an offence under this section is liable on conviction on indictment to a fine of $50 000 or to imprisonment for a term of 5 years or to both.

Child pornography.

13. (1) A person who, knowingly,

(a) publishes child pornography through a computer system; or

(b) produces child pornography for the purpose of its publication through a computer system; or

(c) possesses child pornography in a computer system or on a computer data storage medium for the purpose of publication

is guilty of an offence and is liable on conviction on indictment,

(i) in the case of an individual, to a fine of $50 000 or to imprisonment for a term of 5 years or both; or

(ii) in the case of a corporation, to a fine of $200 000.

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(2) It is a defence to a charge of an offence under subsection (1)(i) or (ii) if the person establishes that the child pornography was for a *bona fide* research, medical or law enforcement purpose.

(3) For the purposes of subsection (1),

(a) "child pornography" includes material that visually depicts

(i) a minor engaged in sexually explicit conduct; or

(ii) a person who appears to be a minor engaged in sexually explicit conduct; or

(iii) realistic images representing a minor engaged in sexually explicit conduct;

(b) "publish" includes

(i) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;

(ii) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph *(a)*; or

(iii) print, photograph, copy or make in any other manner, whether of the same or of a different kind or nature, for the purpose of doing an act referred to in paragraph *(a)*.

Malicious communications.

14. Where a person uses a computer to send a message, letter, electronic communication or article of any description that

(a) is indecent or obscene;

(b) is or constitutes a threat; or

(c) is menacing in character,

and he intends to cause or is reckless as to whether he causes annoyance, inconvenience, distress or anxiety to the recipient or to any other person to whom he intends it or its contents to be

communicated, he is guilty of an offence and is liable on summary conviction to a fine of $10 000 or to imprisonment for a term of 12 months or to both.

PART III

INVESTIGATION AND ENFORCEMENT

Search and seizure.

15. (1) Where a magistrate is satisfied, on information on oath given by a police officer, that there are reasonable grounds for suspecting that an offence under this Act has been or is about to be committed in any place and that evidence that such an offence has been or is about to be committed is in that place, the magistrate may issue a warrant authorising any police officer to enter and search that place, including any computer, using such reasonable force as is necessary.

(2) A warrant issued under this section may authorise a police officer to

(a) seize any computer, data, programme, information, document or thing if he reasonably believes that it is evidence that an offence under this Act has been or is about to be committed;

(b) inspect and check the operation of any computer referred to in paragraph *(a)*;

(c) use or cause to be used any computer referred to in paragraph *(a)* to search any programme or data held in or available to such computer;

(d) have access to any information, code or technology which has the capability of transforming or converting an encrypted programme or data held in or available to the computer into readable and comprehensible format or text, for the purpose of investigating any offence under this Act;

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(e) convert an encrypted programme or data held in another computer system at the place specified in the warrant, where there are reasonable grounds for believing that computer data connected with the commission of the offence may be stored in that other system;

(f) make and retain a copy of any programme or data held in the computer referred to in paragraph *(a)* or *(e)* and any other programme or data held in the computers.

(3) A warrant issued under this section may authorise the rendering of assistance by an authorised person to the police officer in the execution of the warrant.

(4) A person who obstructs a police officer in the execution of his duty under this section or who fails to comply with a request under this section is guilty of an offence and is liable on summary conviction to a fine of $15 000 or to imprisonment for a term of 18 months or to both.

(5) For the purposes of this section,

"authorised person" means a person who has the relevant training and skill in computer systems and technology who is identified, in writing, by the Commissioner of Police or a gazetted officer designated by the Commissioner as authorised to assist the police;

"encrypted programme or data" means a programme or data which has been transformed from its plain text version to an unreadable or incomprehensible format, regardless of the technique utilised for such transformation and irrespective of the medium in which such programme or data occurs or can be found, for the purpose of protecting the content of such programme or data;

"plain text version" means a programme or original data before it has been transformed to an unreadable or incomprehensible format.

Assisting a police officer.

16. (1) A police officer executing a warrant in accordance with section 15 is entitled to require a person who is in possession or control of a computer data storage medium or computer system that is the subject of the search to assist him or an authorised person to

(a) access and use a computer system or computer data storage medium to search any computer data available to or in the system;

(b) obtain and copy computer data referred to in paragraph *(a)*;

(c) use equipment to make copies;

(d) obtain access to decryption information necessary to decrypt computer data required for the purpose of investigating the commission of the offence; and

(e) obtain an intelligible output from a computer system in a plain text format that can be read by a person.

(2) A person who fails without lawful excuse or justification to assist a police officer in accordance with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $15 000 or to imprisonment for a term of 18 months or to both.

(3) For the purposes of this section, "decryption information" means information or technology that enables a person to readily transform an encrypted programme or data from its unreadable and incomprehensible format to its plain text version.

Record of seized data to be provided to owner.

17. (1) Where a computer system or computer data has been removed or rendered inaccessible to the owner or person who has control of the system following a search or a seizure under section 15, the person who made the search shall, at the time of the search or as soon as practicable after the search,

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

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(b) give a copy of that list to

(i) the occupier of the premises; or

(ii) the person in control of the computer system.

(2) Subject to subsection (3), a police officer or authorised person shall, on request,

(a) permit a person who had the custody or control of the computer system, or someone acting on behalf of that person, to gain access to and copy computer data on the system; or

(b) give the person referred to in paragraph *(a)*, a copy of the computer data.

(3) The police officer or authorised person may refuse to give access to or provide copies of computer data referred to in subsection (2) if he has reasonable grounds for believing that giving the access or providing the copies

(a) would constitute a criminal offence; or

(b) would prejudice

(i) the investigation in connection with which the search was carried out; or

(ii) another investigation connected to the one in respect of which the search was carried out; or

(iii) any criminal proceedings that are pending or that may be brought in relation to any of those investigations.

Production of data for criminal proceedings.

18. (1) Where a Judge is satisfied on the basis of an application by a police officer that specified computer data or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Judge may order that

(a) a person in control of a computer system produce from the computer system specified computer data or other intelligible output of that data; and

(b) an Internet service provider in Barbados produce information about persons who subscribe to or otherwise use the service.

(2) A person referred to in paragraph *(a)* or *(b)* of subsection (1) who makes an unauthorised disclosure of any information under his control is guilty of an offence and is liable on conviction on indictment,

(a) in the case of an individual, to a fine of $50 000 or to imprisonment for a term of 5 years or both; or

(b) in the case of a corporation, to a fine of $200 000.

Order for disclosure of data.

19. Where a Judge is satisfied on the basis of an *ex parte* application by a police officer that specified data stored in a computer system is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Judge may order that a person in control of the computer system disclose sufficient traffic data about a specified communication to identify

(a) the Internet service providers; and

(b) the path through which the communication was transmitted.

Preservation of data for criminal proceedings.

20. (1) Where a police officer satisfies a Judge on the basis of an *ex parte* application that

(a) data stored in a computer system is reasonably required for the purposes of a criminal investigation; and

(b) there is a risk that the data may be destroyed or rendered inaccessible,

the Judge may make an order requiring the person in control of the computer system to ensure that the data specified in the order be preserved for a period of up to 14 days.

(2) The period may be extended beyond 14 days where, on an *ex parte* application, a Judge authorises an extension for a further specified period of time.

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Order for payment of compensation.

21. (1) The court before which a person is convicted of any offence under this Act may make an order against him for the payment of a sum to be fixed by the court by way of compensation to any person for any damage caused to that person's computer, programme or data as a result of the commission of an offence for which the sentence is passed.

(2) A claim by a person for damages sustained by reason of the offence is deemed to have been satisfied to the extent of any amount which has been paid to that person under an order for compensation; but the order shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation paid under the order.

(3) An order for compensation under this section is recoverable as a civil debt.

(4) For the purposes of this section, a programme or data held in a computer is deemed to be the property of the owner of the computer.

Regulations.

22. The Minister may make regulations generally for the purpose of giving effect to this Act.

SCHEDULE

(Section 11)

(a) Archives Department;

(b) Barbados Defence Force;

(c) Central Bank of Barbados;

(d) Customs Department;

(e) Director of Public Prosecutions;

(f) Electoral and Boundaries Commission;

(g) Financial Intelligence Unit;

(h) Forensic Laboratory.

(i) Immigration Department;

(j) Inland Revenue Department;

(k) Lands and Survey Department;

(l) Land Tax Department;

(m) Licensing Authority;

(n) National Insurance Department;

(o) National Library Service;

(p) Office of the Attorney-General;

(q) Queen Elizabeth Hospital;

(r) Registration Department;

(s) Royal Barbados Police Force;

(t) the Supreme Court of Judicature; and

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(u) any

(i) statutory corporation;

Cap. 308. (ii) company incorporated under the *Companies Act*; or

(iii) other entity

Cap. 282. that provides a utility service within the meaning of the *Utilities Regulation Act*.