

Computer Crimes Act 1997

An Act to provide for offences relating to the misuse of computers.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1 (1) This Act may be cited as the Computer Crimes Act 1997.

(2) This Act shall come into force on such date as the Prime Minister may, by notification in the Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires -

“computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, storage and display functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include an automated typewriter or typesetter, or a portable hand held calculator or other similar device which is non-programmable or which does not contain any data storage facility;

“computer network” means the interconnection of communication lines and circuits with a computer or a complex consisting of two or more interconnected computers;

“computer output” or “output” means a statement or a representation whether in written, printed, pictorial, film, graphical, acoustic or other form -

- a) produced by a computer;
- b) displayed on the screen of a computer; or
- c) accurately translated from a statement or representation so produced;

“data” means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;

“function” includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer;

“premises” includes land, buildings, movable structures and any conveyance by land, water and air;

“program” means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function.

(2) For the purposes of this Act, a person secures access to any program or data held in a computer if, by causing a computer to perform any function, he -

- (a) alters or erases the program or data;
- (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- (c) uses it; or
- (d) causes it to be output from the computer in which it is held whether by having it displayed or in any other manner,

and references to access to a program or data and to an intent to secure such access shall be construed accordingly.

(3) For the purposes of paragraph (2)(c), a person uses a program if the function he causes the computer to perform -

causes the program to be executed; or

(b) is itself a function of the program.

(4) For the purposes of paragraph (2)(d), the form in which any program or data is output and in particular whether or not it represents a form in which, in the case of a program, it is capable of being executed or, in the case of data, it is capable of being processed by a computer is immaterial.

(5) For the purposes of this Act, access of any kind by any person to any program or data held in a computer is unauthorised if -

- (a) he is not himself entitled to control access of the kind in question to the program or data; and
- (b) he does not have consent or exceeds any right or consent to access by him of the kind in question to the program or data from any person who is so entitled.

(6) A reference in this Act to any program or data held in a computer includes a reference to any program or data held in any removable storage medium which is for the time being in the computer.

(7) 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 any other computer -

- (a) any program or data held in the computer concerned is altered or erased;

- (b) any program or data is introduced or added to its contents; or
- (c) any event occurs which impairs the normal operation of any computer,

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

- (8) Any modification referred to in subsection (7) is unauthorised if -
- (a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and
 - (b) he does not have consent to the modification from any person who is so entitled.

(9) A reference in this Act to a program includes a reference to part of a program.

(10) A reference in this Act to a computer includes a reference to a computer network.

PART II

OFFENCES

- 3 (1) A person shall be guilty of an offence if -
- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer;

the access he intends to secure is unauthorised; and

- (c) he knows at the time when he causes the computer to perform the function that that is the case.

(2) The intent a person has to have to commit an offence under this section need not be directed at -

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

4. (1) A person shall be guilty of an offence under this section if he commits an offence referred to in commit or facilitates section 3 with intent -

- (a) to commit an offence involving fraud or dishonesty or which causes injury as defined in the Penal Code; or

(b) to facilitate the commission of such an offence whether by himself or by any other person.

(2) For the purposes of this section, it is immaterial whether the offence to which this section applies is to be committed at the same time when the unauthorised access is secured or on any future occasion.

(3) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

5. (1) A person shall be guilty of an offence if he modification of the contents does any act which he knows will cause unauthorised of any computer. modification of the contents of any computer.

(2) For the purposes of this section, it is immaterial that the act in question is not directed at -

(a) any particular program or data;

(b) a program or data of any kind; or

(c) a program or data held in any particular computer.

(3) For the purposes of this section, it is immaterial whether an unauthorised modification is, or is intended to be, permanent or merely temporary.

(4) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both; or be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding ten years or to both, if the act is done with the intention of causing injury as defined in the Penal Code.

6. (1) A person shall be guilty of an offence if he communication. communicates directly or indirectly a number, code, password or other means of access to a computer to any person other than a person to whom he is duly authorised to communicate.

(2) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding twenty five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

7. (1) A person who abets the commission of or who attempts. to commit any offence under this Act shall be guilty of that offence and shall on conviction be liable to the punishment provided for the offence.

(2) A person who does any act preparatory to or in furtherance of the commission of any offence under this Act shall be guilty of that offence and shall on conviction be

liable to the punishment provided for the offence:

Provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

8. A person who has in his custody or control any program, data or other information which is held in any computer or retrieved from any computer which he is not authorised to have in his custody or control shall be deemed to have obtained unauthorised access to such program, data or information unless the contrary is proved.

PART III

ANCILLARY AND GENERAL PROVISIONS

9. (1) The provisions of this Act shall, in relation to any person, whatever his nationality or citizenship, have effect outside as well as within Malaysia, and where an offence under this Act is committed by any person in any place outside Malaysia, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia.

(2) For the purposes of subsection (1), this Act shall apply if, for the offence in question, the computer, program or data was in Malaysia or capable of being connected to or sent to or used by or with a computer in Malaysia at the material time.

(3) Any proceeding against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence outside Malaysia.

10. (1) Whenever it appears to any Magistrate upon search, seizure and arrest information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any premises there is evidence of the commission of an offence under this Act, he may, by warrant directed to any police officer of or above the rank of Inspector, empower the officer to enter the premises, by force if necessary, and there to search for, seize and detain any such evidence and he shall be entitled to -

(a) have access to any program or data held in any computer, or have access to, inspect or check the operation of, any computer and any associated apparatus or material which he has reasonable cause to suspect is or has been in use in connection with any offence under this Act;

(b) require -

(i) the person by whom or on whose behalf the police officer has reasonable cause to suspect the computer is or has been so used; or

(ii) any person having charge of or otherwise concerned with the operation of, the computer, apparatus or material,

to provide him with such reasonable assistance as he may require for the purposes of paragraph (a); and

(c) require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) Whenever it appears to any police officer of or above the rank of Inspector that there is reasonable cause to believe that in any premises there is concealed or deposited any evidence of the commission of an offence under this Act, and the police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of the premises all the powers mentioned in subsection (1) in as full and ample a measure as if he were empowered to do so by warrant issued under that subsection.

(3) Any police officer may arrest without a warrant any person whom he reasonably believes to have committed or to be committing an offence against this Act, and every offence against this Act shall be deemed to be a seizure offence for the purposes of the law for the time being in force relating to criminal procedure.

11. (1) A person shall be guilty of an offence if he of-

(a) assaults, obstructs, hinders or delays any police officer in effecting entrance to any premises under this Act or in the execution of any duty imposed or power conferred by this Act; or

(b) fails to comply with any lawful demands of a police officer acting in the execution of his duty under this Act.

(2) A person guilty of an offence under this section shall on conviction be liable to a fine not exceeding twenty five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

12. A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor in writing.

EXPLANATORY STATEMENT

This Bill seeks to make provisions for offences relating to misuse of computers.

2. Part I of the Bill contains preliminary matters.

Clause 1 deals with the short title and commencement.

Clause 2 seeks to define certain words and expressions used in the Bill.

3. Part II deals with offences relating to misuse of computers.

Clause 3 seeks to make it an offence for any person to cause any computer to perform any function with intent to secure unauthorised access to any computer material.

Clause 4 seeks to make it a further offence if any person who commits an offence referred to in clause 3 with intent to commit fraud, dishonesty or to cause injury as defined in the Penal Code.

Clause 5 seeks to make it an offence for any person to cause unauthorised modifications of the contents of any computer.

Clause 6 seeks to provide for the offence and punishment for wrongful communication of a number, code, password or other means of access to a computer.

Clause 7 seeks to provide for offences and punishment for abetments and attempts in the commission of offences referred to in clauses 3, 4, 5 and 6 of this Bill.

Clause 8 seeks to create a statutory presumption that any person having custody or control of any program, data or other information when he is not authorised to have it will be deemed to have obtained unauthorised access unless it is proven otherwise.

Part III deals with ancillary and general provisions.

Clause 9 deals with the territorial scope of offences under the Act.

Clause 10 seeks to provide for the power of the police relating to search, seizure and arrest for the purposes of investigation.

Clause 11 seeks to provide for the offences and punishment for obstructing a police officer from discharging his duties.

Clause 12 deals with the need to obtain the consent in writing of the Public Prosecutor

to institute prosecution.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.