

CONSOLIDATED TO 30 JUNE 2014

LAWS OF SEYCHELLES

CHAPTER 4

COMPUTER MISUSE ACT

[28th December, 1998]

Act 17 of 1998

Act 6 of 2012

ARRANGEMENT OF SECTIONS

Short title

1. This Act may be cited as the Computer Misuse Act.

Interpretation

2. (1) In this Act -

“computer” means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic, or storage 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;

“computer programme” means data representing instruction or statement that, when executed in a computer, causes in a computer to perform a function and includes part of programme;

"data" includes any inputs stored or transmitted in computer usable form;

(2) For the purpose of this Act, a person secures access to computer if the person intentionally causes the computer to perform any function.

(3) For the purpose of this Act, a person secures access to programme or data held in a computer if by intentionally causing a computer to perform a function the person -

- (a) alters or erases the programme or data,
- (b) adds to the contents of the programme or data,
- (c) copies or moves the programme or data -
 - (i) to a different location in the storage medium which it is held; or
 - (ii) to any other storage medium,
- (d) uses the programme or data;
- (e) has the programme or data output from the computer in which it is held, whether by having it displayed or in any other manner

(4) For the purpose of this Act, access of a person to a computer programme or data is unauthorised if

- (a) the person is not entitled to controlled access of the kind in question to the computer or programme or data held in a computer, and
- (b) the person does not have consent to such access from the person who is entitled to such access

(5) For the purposes of this Act a person uses a programme held in a computer, if the function the person causes the computer to perform causes the programme to be executed or is itself a function of the programme.

(6) For the purposes of this Act, in relation to securing access to a programme or data, it is immaterial whether the intent was directed at -

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

(7) A reference in this Act to programme held in a computer includes a reference to a programme or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing a programme or data held in any such medium.

Unauthorised access to computer

3. A person who secures unauthorised access to -

(a) a computer; or

(b) a programme or data held in a computer,

is guilty of an offence and liable on conviction to a fine of R20,000 and to imprisonment for 5 years.

Unauthorised access with criminal intent

4. (1) A person who secures unauthorised access to -

(a) a computer; or

(b) a programme or data held in a computer,

with intent to -

(c) facilitate the commission of a specified offence, whether by that person or some other person;

(d) unlawfully obtain any gain for that person or some other person,

is guilty of an offence and liable on conviction to a fine of R30,000 and to imprisonment for 8 years.

(2) For the purposes of this section-

(a) "Specified offence" means an offence which is punishable on conviction with a fine of R 10,000 or more or a term of imprisonment of two years or more or both the fine and the term of imprisonment;

(b) "gain" and "loss" mean gain or loss in money or other property;

(c) it is immaterial whether the gain or loss is temporary or permanent;

(d) it is immaterial whether the specified offence is to be committed on the same occasion as the authorised access or a future occasion.

Unauthorised modification of computer material

5. (1) A person who intentionally and without authority -

(a) impairs the operation of a Computer,

(b) prevents or hinders access to a programme or data held in a computer;

(c) impairs the operation of a programme or the reliability of data held in a computer;

(d) alters, erases or adds to the content of a programme or data held in a computer,

(e) uses a programme or data held in computer;

(f) copies or moves a programme or data held in a computer-

(i) to a different location in the storage medium in which it is held; or

(ii) to any other storage medium;

(g) has a programme or data held in a computer output from the computer in which it is held, whether by having it displayed or in any other manner,

is guilty of an offence and liable on conviction to a fine of R20,000 and imprisonment for 5 years.

(2) A person does an act referred to in subsection (1) without lawful authority if the person -

(a) is not entitled to determine whether the acts should be done; and

(b) the person does not have consent to do the act from the person who is so entitled.

Jurisdiction

6. (1) An offence under section 3 or section 5 shall be treated as having been committed in Seychelles as long as the circumstances of the offence show at least one significant link with Seychelles, and it is immaterial

(a) whether an act or other event proof of which is required for conviction for the offence occurred in Seychelles; or

(b) whether the accused was in Seychelles at the time of the act or other event.

(2) For the purposes of this section, "significant link" means-

(a) in relation to an offence under section -

(i) that the accused was in Seychelles at the time when the accused did the act which cause the computer to perform the function ; or

(ii) that -

A. the computer; or

B. any computer containing any programme or data to which the accused secured or intended to secure unauthorised access by doing the act which caused the computer to perform the function was in Seychelles at that time,

(b) in relation to an offence under section 5 -

(i) that the accused was in Seychelles at the time when the accused did the unauthorised act; or

(ii) that the unauthorised act took place in Seychelles.

(3) In proceedings for an offence under section 4, there is no need for a significant link to exist for the commission of an offence under section to be established in proof of an allegation to that effect.

(4) Subject to subsection (5), where -

(a) a significant link exists in the case of an offence under section 3; and

(b) commission of the offence is alleged in proceedings for an offence under section 4,

section 4 shall apply as if anything the accused intended to do or facilitate in any place outside Seychelles which would be an offence to which section 4 applies if it took place in Seychelles were the further offence in question.

(5) A person commits an offence by virtue of the application of subsection (4) if -

(a) what the person intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of what the person intended to do or facilitate was intended to take place, and

(b) conduct which is punishable by or under the law in force in any place is an offence under that law for the purpose of this subsection, however the offence is described in that law.

(6) A certificate purporting to be issued by or on behalf of the government of a country other than Seychelles and purporting to state the terms of a corresponding law in force in that country shall be admitted in evidence, in any proceedings for an offence under this Act, on its production by the prosecution without proof of signature and the certificate shall be conclusive evidence -

(a) that it is issued by or on behalf of the government of that country;

(b) that the terms of the law are as stated in the certificate, and

(c) that any facts stated in the certificate as constituting an offence under the corresponding law do constitute the offence.

Attempt, conspiracy etc..

7. (1) On a charge of attempting to commit an offence under section 5 it is immaterial to the accused's

(a) where the attempt was made; and

(b) whether the attempt had an effect in Seychelles.

(2) A person may be guilty of an offence by attempting to commit an offence under section 5 if what the person was attempting would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place and a conduct which is punishable by or under the law in force in any place is an offence under that law for the purposes of this subsection, however the offence is described in that law.

(3) On a charge of incitement to commit an offence under this Act or of soliciting or attempting to procure the commission of an offence under this Act the question where the incitement, soliciting or attempt to procure took place is immaterial to the accused's guilt.

(4) On a charge of conspiracy to commit an offence under this Act it is immaterial to the accused's guilt -

(a) where any person became a party to the conspiracy, and

(b) whether any act, omission or other event occurred in Seychelles.

(5) A person may be guilty of conspiracy to commit an offence under this Act if what the person was conspiring to do would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place and -

(a) a conduct which is punishable by or under the law in force in any place is an offence under that law for the purposes of this subsection, however the offence is described in that law; and

(b) no provision in any law providing that it is a defence to prove that acts are not an offence under a foreign law shall apply.

Conviction of lesser offence charged

8. (1) Where on the trial of a person charged with -

(a) an offence under section 4, or

(b) an offence under section 5 or a related inchoate offence.

the court is of the opinion that the person is not guilty of the offence charged but guilty of an offence under section 3 or a related inchoate offence, the court may convict the person of the offence under section 3 or the related inchoate offence although the person was not charged with the offence.

(2) For the purposes of subsection (1) "related inchoate offence" means -

(a) in relation to section 3 -

(i) the offence of attempt, conspiracy or incitement to commit; or

(ii) the offence of soliciting or attempting to procure the commission of, an offence under section 3;

(b) in relation to section 5 -

(i) the offence of attempting, conspiracy or incitement to commit; or

(ii) the offence of soliciting or attempting to procure the commission of, an offence under section 5.

Enforcement power

9. (1) A police officer may arrest without a warrant a person who has committed whom the police officer reasonably suspects to have committed an offence under this Act.

(2) Where a judicial officer is satisfied on information on oath given by a police officer that there is reasonable ground for believing that an offence under this Act has been or is about to be committed in any premises or that any computer, programme, data, equipment or article connected with the offence is in any premises, the judicial officer may issue a warrant authorising the police officer to enter and search the premises, using such reasonable force as is necessary and to seize any such computer, programme, data or article the police officer reasonably believes may be evidence of commission of the offence.

(3) A warrant under subsection (1) -

(a) may authorise persons to accompany a police officer executing the warrant and to assist the officer in the execution of the warrant, and

(b) remains in force for 14 days from the date of its issue.

(4) A power of seizure conferred on a police officer who has entered premises by virtue of a search warrant issued under the Criminal Procedure Code or a warrant issued under this section in relation to an offence under this Act includes a power to examine the operations of any computer or computer programme or to require any information relating to the offence in respect of which the warrant was issued and held 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 legible.

(5) Where any items seized by a police officer under a search warrant issued under the Criminal Procedure Code or a warrant issued under this section include a computer, disk, tape or other computer equipment, a court may, on the application supported by an affidavit of the person to whom the items belong or from under whose control they were taken, make an order -

(a) permitting a police officer to make copies of such programme or data field in the computer, disk, tape or other equipment as may be required for the investigation or prosecution of an offence under this Act;

(b) requiring copies of copies, referred to in paragraph (a), to be given to a person charged in relation to the offence; and

(c) requiring the items to be returned within the period specified in the order,

and when seizing any of the item the police officer shall inform the person to whom the police officer has reasonable grounds to believe the items belong or from under whose control they are taken of the right of the person to make an application under this Act.

(6) Subsection 9(5)(b) shall not apply -

(a) in relation to copies of any item returned to a person charged; or

(b) where the magistrate or a court is satisfied that -

(i) the provision of copies would substantially prejudice the investigation or prosecution; or

(ii) owing to the confidential nature of the information obtained from the computers, disks, tapes or other equipment, the harm which may be caused to the business or other interests of the applicant or any third party by giving copies of that information to the person charged outweighs any prejudice which may be caused by not so doing.

(7) Notwithstanding any other written law, any copies made pursuant to subsection (6) shall, for the purposes of admissibility in any proceedings, be treated as if they were themselves the items seized.

(8) It is immaterial for the purposes of subsection (4) or subsection (5) whether the giving of any information or copies of any programme or data would be a breach of an obligation, whether imposed by a written law or otherwise, of the person who is the owner or has charge of the computer, disk, tape or other equipment or programme or data held therein to disclose the existence or content of the information, programme or data or to disclose the manner of operation of the computer other equipment or programme.

(9) In this section, "premises" includes land, building, movable structure, vehicle and vessel.

(10) This section shall have effect without prejudice to the power of arrest, inspection, search or seizure under the Criminal Procedure Code and the power to seek and obtain copies of any documents under the Evidence Act., and the Evidence (Banker's Books) Act or any other written law.

Obstruction etc. of police officer

10. A person who resists or obstructs a police officer or person authorised under section 9(3) in the exercise by the police officer or person authorised of any lawful functions under this Act or fails to comply with a request to provide information as provided by section 9(4) is guilty of an offence and liable on conviction to a fine of RI 0.000 and imprisonment for years.

Protection of police etc.

11. A police officer or person authorised under a warrant 9(3) shall not be liable to any claim or action for anything done or omitted to be done in good faith under this Act.

Regulations

12. The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

NO SUBSIDIARY LEGISLATION
