(Draft 19 April 2016)

Computer Crime Act (No……)

B.E. ……..

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# Whereas it is deemed expedient to amend the law on computer-related crime.

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Section 1 This Act shall be called the "Computer Crime Act (No….) B.E…….."

Section 2 This Act shall enter into force 180 days following the date of its publication in the Government Gazette.

Section 3 Section 4 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision:

“Section 4 The Minister of Digital Economy and Information Technology shall have responsibility and control for the execution of this

Act and shall have the power to appoint competent official and issue a Ministerial Regulation and a Notification for the purpose of the execution of this Act.

Such Ministerial Regulation and Notification, when published in the Government Gazette, shall enter into force. ”

Section 4 The following provision shall be added as second and third paragraphs of Section 11 of the Computer Crime Act of B.E. 2550 (2007).

“Any person sending computer data or electronic mail to another person without an opt-out clause in order that the person may deny the reception or express their intent to not receive the data or electronic mail and such data and electronic mail is found to disturb the recipient, must be subject to a fine not exceeding two hundred thousand baht.

The Minister may issue a procedural rule to specify the nature and method of sending and the nature and volume of the data sent and the frequency and method of sending, which are deemed not to cause disturbance to the recipient.”

Section 5 Section 12 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision:

“Section 12 If the commission of an offence under Section 5, or 6, or 7, or 8 or 11 that is an act upon computer data or a computer system related to the maintenance of national security, public security and national economic stability or public infrastructure serving public interest, the offender shall be subject to imprisonment from one year up to seven years and a fine of twenty thousand baht up to one hundred and forty thousand baht.

If the commission of such offence under paragraph one has caused damage to computer data or a computer system related to the maintenance of national security, public security and national economic stability or public infrastructure serving public interest, the offender shall be subject to imprisonment from one year up to ten years and a fine of twenty thousand baht up to two hundred thousand baht.

Section 6. The following provision shall be added as Section 12/1, Section 12/2 and Section 12/3 of the Computer Crime Act of B.E. 2550 (2007).

“Section 12/1 If the commission of an offence under Section 9 or 10 has rendered a harmful effect on other persons or their property, regardless if the damages have taken place immediately or after or concurrently, the offender shall be subject to imprisonment not more than ten years and a fine of two hundred thousand baht.”

“Section 12/2 If the commission of an offence under Section 9 or 10 that is an act upon computer data or a computer system related to the maintenance of national security, public security and national economic stability or public infrastructure serving public interest, the offender shall be subject to imprisonment from three years up to fifteen years and a fine of sixty thousand baht up to three hundred thousand baht.

“Section 12/3 If the commission of an offence under Section 12 (1) or Section 12/1, albeit without intent to kill, has resulted in the death of a person, the offender shall be subject to imprisonment from five years up to twenty years and a fine of one hundred thousand baht up to four hundred thousand baht.”

Section 7 The following provision shall be added as paragraphs two, three, four and five of Section 13 of the Computer Crime Act of B.E. 2550 (2007).

“Whoever sells or distributes a set of instruction specifically designed as a tool for the commission of an offence under Section 12 (1) or Section 12/1 shall be subject to imprisonment not exceeding two years or a fine not exceeding forty thousand baht, or both.

Whoever sells or distributes a set of instruction specifically designed as a tool for the commission of an offence under Section 5, or 6, or 7, or 8, or 9, or 10 or 11 and if the person who has put it to use is found culpable as to Sections 12, 12/1, 12/2 or 12/3, the person who sells or distributes such a set of instruction shall receive a higher penalty rate, only if they had been aware or could have foreseen such a result.

Whoever sells or distributes a set of instruction specifically designed as a tool for the commission of an offence under Sections 12, 12/1 or 12/2, or 12/3 and if the person who has put it to use is found culpable as to Section 12, or 12/1, or 12/2, the person who sells or distributes such a set of instruction shall receive a higher penalty rate.

If the person who sells or distributes the set of instruction is found guilty as per paragraph one, or two and paragraph three or four as well, the person shall be sentenced to the highest penalty rate for one count”.

Section 8 Section 14 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“Section 14 Any person committing the following offences shall be subject to imprisonment up to five years and a fine not exceeding one hundred thousand baht, or both.”

(1) With ill or fraudulent intent, imports into a computer system of forged computer data, partially or entirely, or false information which may render a harmful effect to the public

(2) Import into a computer system false information which may compromise the maintenance of national security, public security, economic stability or public infrastructure serving public interest or cause panic in the public

(3) Import into a computer system any computer data which is an offence against national security or is an offence per the Penal Code’s anti-terrorism provision

(4) Import into a computer system any computer data which is obscene and is accessible by the public

(5) Disseminate or forward any computer data when being aware that it was the computer data as described in (1), (2), (3) or (4)

If the offence under paragraph one (1) has not been committed against the public, but an individual, the actor, the distributor or the sender of the computer data shall be subject to imprisonment not exceeding three years and a fine not exceeding sixty thousand baht up, or both, and it is a compoundable offence.

Section 9 Section 15 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“Section 15 Any service provider who cooperates, consents or acquiesces to the commission of an offence under Section 14 within a computer system under their charge shall be subject to the same penalty as that imposed upon a person committing an offence under Section 14.

The Minister shall issue a procedural rule regarding the notification and the request for suppression of the dissemination of such data and the removal of such data from a computer system.

If the service provider is able to prove a compliance to such procedural rule issued by the Minister as per paragraph two had been made, they shall be exempted from penalty.

Section 10 Section 16 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“Section 16 Any person who imports into a publicly accessible computer system of computer data including images of other person and whether or not the images have been created, doctored, appended, or adapted by electronics means or whatsoever means and by doing so, it is likely to impair the reputation of such other person or to expose such other person to hatred or contempt, shall be subject to imprisonment not exceeding three years and a fine not exceeding two hundred thousand baht, or both.

If the commission of such act in paragraph one was made against images of a deceased person and by doing so, it is likely to impair the reputation of such person’s parents, spouses or children or to expose them to hatred or contempt shall be subject to imprisonment applicable in paragraph one.

If the commission of such act in paragraph one and two was made in good faith by way of fair comment on any person or thing subjected to public criticism, the person shall not be guilty.

An offence under paragraph one or two shall be a compoundable offence.

If the injured person as a result of the offence in paragraph one or two had died before lodging the complaint, their parents, spouses or children shall retain the right to complain and shall be treated as an injured party.”

Section 11 The following provision shall be added to Section 16/1 and 16/2 of the Computer Crime Act of B.E. 2550 (2007).

“Section 16/1 As to the offence under Section 16 based on which the accused has been found guilty by the Court, the Court may give order;

(1) To seize and destroy the images

(2) To publish in whole or in part the verdict in electronics media, or radio, or television or newspaper as deemed fit by the Court at the expense of the accused.

Section 16/2 Any person who is aware that electronics data in one’s possession is the data ordered for seizure and destruction as to Section 16/1, the person is obliged to destroy such data. Any violation shall result in the person having to serve half of the penalty as provided for by the law in Section 16.”

Section 12 The following provision shall be added to Section 17/1 of the Computer Crime Act of B.E. 2550 (2007).

“Section 17/1 For all the offences in the Act which sanction only a fine or an imprisonment not exceeding two years, the settlement committee appointed by the Minister shall have the power to settle the case.

The settlement committee appointed by the Minister in paragraph one shall be consisted of three persons, one of whom has to be an inquiry official according to the Criminal Procedure Code.

After the settlement committee has decided to settle any case and the alleged offender has paid up the settlement sum within the time fixed by the settlement committee, such case shall be settled as per the Criminal Procedure Code.

If the alleged offender fails to pay the settlement sum within the time, the case shall be proceeded and the statute of limitations for the new indictment shall be counted from the deadline of the settlement payment.”

Section 13. The following provision shall be added to Section 18 of the Computer Crime Act of B.E. 2550 (2007).

“With the enforcement of Section 19 and for the benefit of investigation, when it could be reasonably believed that the offence per this Act or other criminal offences per the other laws have been committed with the aid of a computer system, computer data or a storage device, the competent official shall have one of the following powers necessary for the acquisition of evidence to prove the wrongdoing and to identify the perpetrators.”

Section 14. The following provision shall be added as paragraphs two and three of Section 18 of the Computer Crime Act of B.E. 2550 (2007)

“For the benefit of the investigation of inquiry official per the Criminal Procedure Code, as to all criminal offences per the other laws which have been committed with the aid of a computer system, computer data or a storage device, the inquiry official may request for help from the competent official to act as per paragraph one, (2). (3), (4), (5), 6), (7), or (8).

The person requested for help by the competent official as per paragraph one, (1), (2), and (3) shall without delay act as requested, but not after seven days since the request has been received, save for some force majeure.

Section 15 Section 20 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“When the following computer data has been distributed, the competent officials with approval from the Minister may file an application with supporting evidence to the Court of jurisdiction to ask the Court to issue a writ to suppress the distribution or to remove such data from a computer system.

(1) Computer data actionable per this Act

(2) Computer data which may compromise the national security as prescribed for in Book II, Title 1 or 1/1 of the Penal Code

(3) Computer data which is a criminal offence per other laws and a request has been made by the official in charge of the laws and computer data which is a breach to the public order or moral high ground of the people

(4) Computer data which is not an offence against any laws, but is deemed to be a breach to the public order or moral high ground of the people and that the Computer Data Screening Committee appointed by the Minister have unanimously decided to have the competent official with approval from the Minister to file a complaint with supporting evidence to the Court of jurisdiction to ask the Court to issue a writ to suppress the distribution or to remove such data from a computer system.

The Computer Data Screening Committee appointed by the Minister according to paragraph one (4) shall be consisted of five members, two of whom shall come from concerned private sector.

The filing of complaint and supporting evidence of the competent official, the review of the complaint and the issuance of the court writ per paragraph one may be conducted through electronics means per the procedure and methods designated by the Minister and with approval from the President of the Supreme Court.

When the Court issues a write to suppress the distribution or to remove such data per paragraph one, the competent official may suppress the distribution or remove the computer data themselves or instruct the service provider to suppress the distribution or remove the computer data in their behalf.

The Minister may determine the procedure, duration and guidelines for the service providers to suppress the distribution or remove the computer data, and they shall be made compatible to each other and in response to the changing technology”.

Section 16 Paragraph two under Section 21 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“The undesirable set of instruction under paragraph one shall refer to a set of instruction which causes a computer data, a computer system or other existing instruction sets to be damaged, destroyed, corrected, amended or appended, interrupted or, fail to perform according to the pre­determined instructions or otherwise as required by a relevant Ministerial Regulation, with the exception of sets of instructions aimed at preventing or correcting the foregoing sets of instructions.”

Section 17 Section 25 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“Section 25 Data, computer data or computer traffic data that the competent official of the Act or the inquiry official appointed according to paragraph two of Section 18 shall be admissible as evidence under the provision of the Criminal Procedure Code or other relevant law related to witness examination, however, it must not have been obtained by way of influencing, promising, deceiving, the use of force or other wrongful ways.”

Section 18 Paragraph one under Section 26 of the Computer Crime Act of B.E. 2550 (2007) shall be repealed and replaced by the following provision.

“Section 26. A service provider is obliged to retain computer traffic data for at least ninety days from the date on which the data is imported into a computer system. However, if necessary, a competent official may instruct a service provider to retain such data for a period of time longer than ninety days but not exceeding two year, though the instruction must be made on particular providers and only on particular occasions. In such case, the provider may appeal the instruction by way as provided for by the law concerning administrative procedure”.

Section 19 The following provision shall be added to paragraphs two and three of Section 28 of the Computer Crime Act of B.E. 2550 (2007).

“The person appointed as competent official shall be treated as a person holding the position based on a special circumstance per the civil service law and is therefore entitled to receive additional payment as a result of the special circumstance.

The additional payment as a result of the special circumstance shall be determined based on the person’s duties, quality of service, and the impartial behavior and the payment shall be compatible to the remuneration of officials in the justice process. However, it shall also comply with the regulation of the Ministry of Digital Economy and Information Technology with approval from the Ministry of Finance.”

Section 20 The following provision shall be added to paragraphs two and three of Section 31 of the Computer Crime Act of B.E. 2550 (2007).

“Section 31 the following expenses and their disbursement shall be made per the regulation of the Ministry of Digital Economy and Information Technology with approval from the Ministry of Finance.

(1) The investigation, the acquisition and corroboration of evidence to prove the computer related crime

(2) The executions per Section 18 paragraph one (4), (5), (6), (7) or (8)

(3) Any other executions necessary for the prevention and suppression of computer crime as provided for by this Act”.

Countersigned

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Prime Minister