

Explanatory Memorandum of
Thailand's Computer Crime Act (No.....)

B.E.

Principle

The amendments of Thailand's Computer Crime Act B.E. 2550 (2007) are as follows:

- (1) To add provisions that authorize the Minister of Digital Economy and Information Technology to have responsibility and control for the execution of this Act (Section 3).
- (2) To add the provisions to assign a base offence level in case of sending computer data or electronic mail to another person in a manner that disturbs the other person's normal operation of their computer system according to an intendment of law (Section 4).
- (3) To add the provisions related to any actions that deserve more punishments provided that it has a massive impact on societies (Section 5).
- (4) To add the provisions related to the commission of an offence that involves import to a computer system of forged computer data according to an intendment of law and the law enforcement (Section 6 and Section 7).
- (5) To add the provisions that assigns the instructions for service provider to conduct for the proof of liability (Section 8).
- (6) To add the provisions of the commission of an offence on any computer data of a pornographic nature that involves a person under the age of eighteen years (Section 9).
- (7) To add the provisions of investigation and evidence collection to support the relevant competent official's action for an offence under the other law. (Section 10).
- (8) To add the details of instruction to restrain the dissemination of computer data (Section 11).
- (9) To add the definition of the undesirable sets of instructions (Section 12).

- (10) To add more type of competent official to support the expansion of their power of authority (Section 13).
- (11) To amend and add the timing and the details of instruction for storing computer traffic data (Section 14).
- (12) To add the regulations for the payment of gratuity or expenditure to the competent official in the performance of duties (Section 15).
- (13) To add the central agency for controlling the operations and budget allocation under this Act (Section 16).

Rationale

Nowadays the computer-related crimes are becoming increasingly complex according to the rapid development of technology. The threat of cybercrime significantly affects the trust in electronic commerce transactions that create economic value added and it may cause damage to the country's basic infrastructure such as country's security, economic security, public services, etc. Additionally, the computer system is one of the channels in terms of the dissemination of illegal computer data that may cause more severe social problems. In case the computer crime occurs, the relevant competent official appointed under the Computer Crime Act B.E. 2550 (2007) will generally receives data or evidences that would be beneficial for further legal proceedings, however, the competent official cannot legally disseminate such data or evidences to other government officers. Therefore, the amendment of the existing law is necessary in order to lessen the problems and the limitation of authorities' powers resulted in the integration of preventing and suppressing of the computer-related crime.

(Draft)

Computer Crime Act (No.....)

B.E.

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Whereas it is 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. Paragraph one under Section 4 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“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 authority to issue a Ministerial Rule for the purpose of the execution of this Act.”

Section 4. Section 11 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Any person sending computer data or electronic mail to another person in a manner that disturbs the other person's normal operation of their computer system and do not provide an opportunity for them to cancel or reject the unwanted data or electronic mail must be subject to a fine of not more than one hundred thousand baht.

The details of instruction for the computer data and electronic email sending under paragraph one shall be as per the form required by a Minister.

Section 5. Section 12 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 12 The perpetration of an offence under Section 5, Section 6, Section 7, Section 8 or Section 11 that is an act that is likely to damage computer data or a computer system related to the country's security, public security and economic security or public services or is an act against computer data or a computer system available for public use must be subject to imprisonment from one years up to seven years and a fine of twenty thousand baht up to one hundred and forty thousand baht.

The commission of an offence under Section 9 or 10 that is an act that is likely to damage computer data or a computer system related to the country's security, public security and economic security or public services or is an act against computer data or a computer system available for public use must 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 6. Section 14 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 14. Any person who commits the offence that involves import to a computer system of forged computer data in a manner that is likely to cause damage to that third party must be subject to imprisonment for not more than three years or a fine of not more than sixty thousand baht or both.

The commission of the offence under paragraph one that is occurred by importing to a computer system of forged computer data, the offender must be subject to imprisonment for not more than five years or a fine of not more than five hundred thousand bath or both.

An offence under paragraph one shall be a compoundable offence.”

Section 7. Section 14/1 and Section 14/2 of the Computer Crime Act of B.E. 2550 (2007) is added as follows:

“Section 14/1 Any person committing an offence that involves import to a computer system of false computer data in a manner that is likely to damage the country's security or cause a public panic must be subject to imprisonment for not more than three years or a fine of not more than sixty thousand baht or both.

Section 14/2 Any person committing an offence that involves import to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code must be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both.”

Section 8. Section 15 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 15 Any service provider intentionally supporting or consenting to an offence under Section 14/1 or Section 14/2 within a computer system under their control must be subject to the same penalty as that imposed upon a person committing an offence under Section 14/1 and Section 14/2.

If any service provider can prove that they follow the instruction to restrain the dissemination of such computer data or destroy such data from a computer system as required by a Minister, the perpetrator is not guilty.

Section 9. Section 16/1 of the Computer Crime Act of B.E. 2550 (2007) is added as follows:

“Section 16/1 Any person who

- (1) produces any computer data of all types of pornography that involves a person under the age of eighteen years with the objective of distributing data via computer system.
- (2) presents or provides any computer data of all types of pornography that involves a person under the age of eighteen years via computer system
- (3) distribute or transfer any computer data of all types of pornography that involves a person under the age of eighteen years via computer system

- (4) supply any computer data of all types of pornography that involves a person under the age of eighteen years via computer system for both personal and other people's use.
- (5) possess any computer data of all types of pornography that involves a person under the age of eighteen years in computer system or any medias that store computer data with the objective of businesses or making a profit

shall be subject to imprisonment for no longer than six years or a fine of not more than two hundred thousand baht or both.

Section 10. Section 18 of the Computer Crime Act of B.E. 2550 (2007) is added the following provisions as paragraph two and paragraph three:

“For the benefit of investigation and inquiry, in case there is a reasonable cause to believe that there is the perpetration of an offence to computer system, computer data, or any computer data storage devices under any laws, the superior administrative or police official under the Criminal Procedure Code or the competent official under other laws shall perform under this Act only the necessities for the benefits of using as evidences related to the commission of an offence or searching for an offender under the competent authorities indicated in paragraph one, paragraph two and paragraph three. The aforementioned officials shall request the relevant competent official to take action provided that their power of authority is limited under this Act.”

Section 11. Paragraph one under Section 20 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 20. In case of the dissemination of computer data that is an offence under this Act or the computer data that related to the country's security or the terrorism-related offences under the Criminal Code or the dissemination of computer data that is an offence under other laws required by the officials under the laws, the competent official shall file a petition and provide any proof and evidence to the court in order to gives an instruction to restrain the dissemination of such computer data.”

Section 12. Paragraph two under Section 21 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“The undesirable sets of instructions under paragraph one shall mean to include sets of instructions that cause computer data, a computer system or other instruction sets to be damaged, destroyed, corrected, changed,

added, interrupted or, fail to perform according to pre-determined instructions or otherwise as required by a relevant Ministerial Rule, with the exception of sets of instructions aimed at preventing or correcting the foregoing sets of instructions.”

Section 13. Section 22, Section 23, Section 24 and Section 25 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 22. Any relevant competent official, superior administrative or police official shall not disclose or deliver computer data, computer traffic data or service users' data acquired under Section 18 to any person.

The provisions under paragraph one shall not apply to any actions performed for the benefit of lodging a lawsuit against a person who has committed an offence under this Act or for the benefit of lodging a lawsuit against a relevant competent official, superior administrative or police official on the grounds of their abuse of authority or for action taken according to a court's instruction or permission.

Any competent official, superior administrative or police official who violates paragraph one must be subject to imprisonment for no longer than three years or a fine of not more than sixty thousand baht, or both.

Section 23. Any relevant competent official, superior administrative or police official who commits an act of negligence that causes a third party to know of computer data, computer traffic data or a service user's data acquired under Section 18 must be subject to imprisonment for no more than one year or a fine of not more than twenty thousand baht, or both.

Section 24. Any person knowing of computer data, computer traffic data or a service user's data acquired by the relevant competent official, superior administrative or police official under Section 18 and disclosing it to any person shall be subject to imprisonment for no longer than two years or a fine of not more than forty thousand baht, or both.

Section 25. Data, computer data or computer traffic data that the competent official, superior administrative or police official acquired under this Act shall be admissible as evidence under the provision of the Criminal Procedure Code or other relevant law related to the investigation, however, it must not be in the way of influencing, promising, deceiving or other wrongful ways.”

Section 14. Section 26 of the Computer Crime Act of B.E. 2550 (2007) is repealed and replaced as follows:

“Section 26. A service provider must store computer traffic data for at least ninety days from the date on which the data is input into a computer system. However, if necessary, a relevant competent official may instruct a service provider to store data for a period of longer than ninety days but not exceeding two year.

The service provider must keep the necessary information of the service user in order to be able to identify the service user from the beginning of the service provisions, and such information must be kept for a further period not exceeding ninety days after the service agreement has been terminated.

Definitions and details of instructions that the provisions under paragraph one shall apply and the timing of this application shall be established by a Minister and published in the Government Gazette.

A service provider who fails to comply with this Section must be subject to a fine of not more than five hundred thousand baht.

Section 15. The following provision is added as a paragraph 2 of the Computer Crime Act of B.E. 2550 (2007):

“The Minister shall publish the regulations for the payment of gratuity or expenditure to the relevant competent official in the performance of duties”

Section 16. The following provision is added as Section 31 of Computer Crime Act of B.E. 2550 (2007):

“Section 31. Nation Cyber Security Committee (NCSC) shall be the central agency to control, monitor and assess operational performance of the competent official under this Act.”

Section 32. Bureau of The Budget and Ministry of Finance shall provide the budget supports for any operations of the relevant competent official in the performance of duties acquired under this Act.”

Countersigned

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Prime Minister