
2nd Workshop On Transposition Of SADC Cybersecurity Model Laws In National Laws For Namibia

Windhoek, Namibia – 22 July 2013

Transposition of SADC Model Law Cybercrime into Namibian Law

Presented by: Ndapwilapo Selma Shimutwiken



Committed to connecting the world



BACKGROUND

- The objective of the Act is to provide a legal framework for the criminalisation and investigation of computer and network related offences i.e. cybercrime
- It aims to criminalize certain illegal activity or content **in line with regional and international best practices** and provide the necessary specific procedural mechanisms for the investigation of such offences and it also defines the liability of service providers.



CYBERCRIME SUBSTANTIVE PROVISIONS

- UNAUTHORISED ACCESS
- UNAUTHORISED INTERCEPTION
- DATA ESPIONAGE
- UNAUTHORISED DATA INTERFERENCE
- UNAUTHORISED SYSTEM INTERFERENCE
- ILLEGAL DEVICES
- COMPUTER-RELATED FORGERY
- COMPUTER-RELATED FRAUD
- CHILD PORNOGRAPHY
- ELECTRONIC EXTORTION
- IDENTITY RELATED CRIMES
- SPAM
- DISCLOSURE OF DETAILS OF AN INVESTIGATION
- FAILURE TO PROVIDE ASSISTANCE



SECTION 71: UNAUTHORISED ACCESS

Any **person or party** who knowingly, without authorisation accesses the whole or any part of a computer system or remains logged in a computer system or part of a computer system or continues to use a computer system shall commit an offence.



SECTION 72: UNAUTHORISED INTERCEPTION

Any **person or party** who knowingly, without authorisation intercepts by technical means

- (a) any non-public transmission to, from or within a computer system; or
- (b) electromagnetic emissions from a computer system shall commit an offence.



SECTION 73: DATA ESPIONAGE

Any **person or party** who knowingly, without authorisation obtains, for himself or for another, computer data which are not meant for him and which are specially protected against unauthorized access, shall commit an offence.



SECTION 74: UNAUTHORISED DATA INTERFERENCE

Any person or party who knowingly, without authorisation does any of the following acts:

- (a) **damages** or **deteriorates** computer data; or
- (b) **deletes** computer data ; or
- (c) **alters** computer data; or
- (d) **renders** computer data **meaningless, useless or ineffective**; or
- (e) **obstructs, interrupts or interferes** with the lawful use of computer data; or
- (f) **obstructs, interrupts or interferes** with any person in the lawful use of computer data; or
- (g) **denies access** to computer data to any person authorized to access it; shall commit an offence.

SECTION 75: UNAUTHORISED SYSTEM INTERFERENCE

(1) Any **person or party** who knowingly, without authorisation does any of the following acts:

(a) hinders or interferes with the functioning of a computer system; or

(b) hinders or interferes with a person who is lawfully using or operating a computer system; shall commit an offence.

(2) Any **person or party** who knowingly, without authorisation hinders or interferes with a computer system that is exclusively for the use of critical infrastructure operations, or in the case in which such is not exclusively for the use of critical infrastructure operations, but it is used in critical infrastructure operations and such conduct affects that use or impacts the operations of critical infrastructure shall commit an offence.



SECTION 76: ILLEGAL DEVICES

(1) Any **person or party** shall commit an offence if the person or party knowingly and without authorisation,

(a) produces, sells, procures for use, imports, exports, distributes or otherwise makes available:

(i) a device, including a computer program, that is designed or adapted for the purpose of committing an offence defined by other provisions of Chapter 11 of this law; 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 defined by other provisions of Chapter 11 of this law; or

(b) has an item mentioned in subparagraph (i) or (ii) in his or her possession with the intent that it be used by any person for the purpose of committing an offence defined by other provisions of Chapter 11.

(2) This provision shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 is **not for the purpose of committing an offence** established in accordance with other provisions of Chapter 11 of this law, such as for the **authorized testing or protection of a computer system.**



SECTION 77: COMPUTER-RELATED FORGERY

Any **person or party** who knowingly, without authorisation, **inputs, alters, deletes, or suppresses** computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible shall commit an offence.



SECTION 78: COMPUTER-RELATED FRAUD

Any **person or party** who knowingly, without authorisation causes a loss of property to another person by:

(a) any **input, alteration, deletion or suppression** of computer data;

(b) any **interference** with the functioning of a computer system,

with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person or party shall commit an offence.

SECTION 79: CHILD PORNOGRAPHY

Any **person or party** who **knowingly, without authorisation**,

- (a) produces child pornography for the purpose of its distribution through a computer system;
 - (b) offers or makes available child pornography through a computer system;
 - (c) distributes or transmits child pornography through a computer system;
 - (d) procures and/or obtain child pornography through a computer system for oneself or for another person or party;
 - (e) possesses child pornography in a computer system or on a computer-data storage medium;
 - (f) knowingly obtains access, through information and communication technologies, to child pornography,
- shall commit an offence.

(2) It is a defence to a charge of an offence under paragraph (1) (b) to (1)(f) if the person establishes that the child pornography was a bona fide law enforcement purpose.



SECTION 80: ELECTRONIC EXTORTION

Any person or party, who knowingly and without authorization initiates any electronic communication, with the **intent to coerce, intimidate, harass, or cause substantial emotional distress** to a person, using a computer system to support severe, repeated, and hostile behavior, shall commit an offence.



SECTION 81: IDENTITY-RELATED CRIMES

Any **person or party** who **knowingly and without authorization** by using a computer system in any stage of the offence, **intentionally** transfers, possesses, or uses a means of identification of another person with the intent to commit, or to aid or abet, or in connection with any unlawful activity, shall commit an offence.



SECTION 82: SPAM

Any **person or party** who **knowingly, without authorization**

- (a) initiates the transmission of multiple electronic mail messages from or through such computer system; or
 - (b) uses a protected computer system to relay or retransmit multiple electronic mail messages, with the intent to deceive or mislead users, or any electronic mail or service provider, as to the origin of such messages, or
 - (c) materially falsifies header information in multiple electronic mail messages and intentionally initiates the transmission of such messages,
- shall commit an offence.



SECTION 83: DISCLOSURE OF DETAILS OF AN INVESTIGATION

A service provider who receives an order related to a criminal investigation that explicitly stipulates that confidentiality is to be maintained or such obligation is stated by law and intentionally without lawful excuse or justification or in excess of a lawful excuse or justification discloses:

- (a) the fact that an order has been made; or
 - (b) anything done under the order; or
 - (c) any data collected or recorded under the order;
- shall commit an offence.

SECTION 83: FAILURE TO PROVIDE ASSISTANCE

Any person or party other than the suspect who knowingly and without authorization fails to permit or assist a person based on an order as specified by Sec. xx and xx shall commit an offence.



THANK YOU

