

ANTIGUA AND BARBUDA



ELECTRONIC CRIMES (AMENDMENT) BILL, 2018

NO. OF 2018

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AN ACT to amend the Electronic Crimes Act 2013, No. 14 of 2013.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Electronic Crimes (Amendment) Act, 2018.

2. Interpretation

In this Act—

“principal Act” means the Electronic Crimes Act 2013, No. 14 of 2013.

3. Amendment of section 2 - Interpretation

The principal Act is amended in section 2 by –

(a) deleting the definition of child pornography and replacing it as follows –

“child pornography” includes images or other materials, including video or other visual representation, that –

- (i) depicts, presents or represents a child engaging in sexually explicit activity or conduct,
- (ii) for a sexual purpose, shows parts of a child’s body, whether natural or computer generated, pasted to visual representation of an adult’s body; or
- (iii) exploits a child for sexual stimulation;

(b) inserting the following definition in its appropriate alphabetical position —

“Minister” means the Minister with responsibility for Public safety;

4. Amendment of section 4 – sending offensive message through communication services, etc

The principal Act is amended in section 4 (1) by –

(a) repealing the words, “offensive or” in paragraph (a);

(b) deleting paragraph (b) and replacing it as follows –

“(b) an electronic mail or an electronic message for the purpose of causing annoyance, insult, intimidation, enmity or hatred.” and

(c) deleting paragraph (c) in its entirety.

5. Amendment of section 6 – Electronic forgery

Section 6 of the principal Act is repealed and replaced as follows –

“6. Electronic forgery

(1) A person commits the offence of electronic forgery if that person with intent to defraud or deceive another –

(a) inputs, alters, deletes, or suppresses computer data, resulting in inauthentic data with intent that it be considered or acted upon as if it were authentic;

(b) creates, operates or presents a false website as the site of an established business entity with intent that it be considered or acted upon as if it were authentic;

(c) assumes a false identity in any electronic message or electronic mail for the purpose of gaining a benefit for himself or some other person; or

(d) post or otherwise publish any false document on any website with the intent that it be acted upon as if it were the real document.

(2) A person who is guilty of the offence of electronic forgery shall be liable on –

(a) summary conviction to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or

(b) conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.”

6. Amendment of section 7 – Electronic fraud

Section 7 of the principal Act is repealed and replaced as follows –

“7. Electronic fraud

“(1) A person commits the offence of electronic fraud if that person intentionally and without lawful excuse, induce another person to enter into a relationship, or cause that other person to suffer financial loss or loss of property, by –

- (a) any input, alteration, deletion, or suppression of computer data; or
- (b) any interference with the functioning of an electronic system.

(2) A person who is guilty of the offence of electronic fraud is liable on –

- (a) summary conviction to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or
- (b) conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.”

7. Amendment of section 8 – Violation of privacy

The principal Act is amended in section 8 by repealing the section in its entirety and replacing it as follows –

“8. Violation of privacy

(1) A person commits an offence if that person intentionally and without lawful excuse or justification captures, publishes or transmits the image of the private area of another person without his or her consent, or captures, publishes or transmits the image, whether whole or partial, of another person in a vulnerable position under circumstances violating the privacy of that person.

(2) A person who commits an offence under subsection (1) is liable on –

(a) summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; or

(b) conviction on indictment to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(3) In this section –

“capture” means to videotape, photograph, film or record by any means;

“private area” means the naked or undergarment clad genitals, pubic area or buttocks of a person, or female breast;

“publishes” means to electronically send a visual image with the intent that it be viewed by a person or persons;

“under circumstances violating the privacy” means circumstances in which a person can have a reasonable expectation that –

(i) he or she could disrobe in privacy, without being concerned that an image of his or private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

8. Amendment of section 9 – Misuse of encryption

Section 9 of the principal Act is amended in subsection (1) by repealing all the words appearing after “concealment” and replacing these with the following words:

“of evidence of any criminal matter, intentionally encrypt any communication or data contained in an electronic message or an electronic system.”

9. Amendment of section 18 – Production order

Section 18 of the principal Act is amended –

(a) in subsection (1) –

- (i) by repealing the words “may apply” and replacing these with the words “shall apply”;
- and
- (ii) by inserting immediately after the words “compelling -” the following –
 - “(a) a person to submit specified data in that person’s possession or control, which is stored in an electronic system;
 - “(b) a service provider offering its services to submit subscriber information in relation to the services in that service provider’s possession and control.”
- (b) by repealing subsection (2) in its entirety; and
- (c) by renumbering subsection (3) as subsection (2), and subsection (4) as subsection (3).

10. Amendment of sections 19(1) and 20 of the principal Act

The principal Act is amended in sections 19(1) and section 20 by repealing the words “may apply” and replacing these with the words “shall apply”.

Passed the House of Representatives
this the day of 2018.

Passed the Senate
this day of 2018

Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

EXPLANATORY MEMORANDUM

The objective of this legislation is to update the Electronic Crimes Act 2013, No. 14 of 2013, to give effect to the decision of Her Ladyship Justice Clare Henry and to give greater clarity to the offensive under the Act.

This amendment contains 10 clauses.

Clauses 1 and 2 are standard.

Clause 3 amends the interpretation section of the principal Act, by repealing the definition of “child pornography” and inserting a definition for Minister. The definition used in the principal Act for “child pornography” referred only to images and representations of a child engaging in sexually explicit conduct. However, by this amendment, the definition has been widened; and in addition to images and representations of a child engaged in sexually explicit conduct, the term will also now refer to images and representations that –

“(ii) for a sexual purpose, shows parts of a child’s body, whether natural or computer generated, pasted to images or visual representation of an adult’s body and vice versa; or

(iii) exploits a child for sexual stimulation;”

Clause 4 is a direct result of a recent decision of the High Court. It was felt that the section was too widely drafted and left open the possibility of a violation of the enjoyment of freedom of expression which is protected in the constitution.

Clauses 5 and 6 amends and clarifies the offences of electronic forgery and electronic fraud to bring these in line with international standards.

Clause 7 amends section 8 that deals with violation of privacy. This section was considered too wide and unclear.

Clause 8 deals with the offence of misuse of encryption. This section was amended to make the elements of the offence more specific. It was believed that use of the word “incriminating” was too subjective.

Clause 9 amends section 18 by making it mandatory for a police officer to obtain an order from a Magistrate or a Judge in respect of obtaining private information on any electronic system. The amendment also corrects a typographical error.

Clause 10 amends sections 19(1) and 20 of the principal Act by again seeking to protect the Freedom of expression and the right not to be subjected to arbitrary search and seizure by making it mandatory for the police to apply to the Magistrate or a Judge for the appropriate order to conduct their activities.

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Honourable Steadroy C. O. Benjamin
Minister of Public Safety.