

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE ON JUSTICE
AND CORRECTIONAL SERVICES
PROPOSED AMENDMENTS
TO THE

CYBERCRIMES BILL**

[B 6B—2017]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 6C—2017]

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PROPOSED AMENDMENTS AGREED TO

CYBERCRIMES BILL [B 6B—2017]

CLAUSE 1

1. On page 5, from line 6, omit the definition of “**article**” and to **substitute**:

“**article**” means any—

- (a) data;
- (b) computer program;
- (c) computer data storage medium; or
- (d) computer system,

which—

- (i) is concerned with, connected with or is, on reasonable grounds, believed to be concerned with or connected with the commission or suspected commission;
- (ii) may afford evidence of the commission or suspected commission; or
- (iii) is intended to be used or is, on reasonable grounds believed to be intended to be used in the commission or intended commission,

of—

- (aa) an offence in terms of Part I and Part II of Chapter 2;
- (bb) any other offence in terms of the law of the Republic; or
- (cc) an offence in a foreign State that is substantially similar to an offence contemplated in Part I or Part II of Chapter 2 or another offence recognised in the Republic;

2. On page 5, in line 16, to omit “ “**Companies Act, 2008**” means the Companies Act, 2008 (Act No. 71 of 2008);”.

3. On page 5, after line 36, to insert:

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

4. On page 5, after line 50, to insert:

“**Electronic Communications Act, 2005**” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

5. On page 5, from line 51, to omit the definition of “**electronic communications identity number**”.

6. On page 5, after line 57, to insert:

“**electronic communications network**” means an “electronic communications network” as defined in section 1 of the Electronic Communications Act, 2005, and includes a computer system;

7. On page 5 before line 58, to insert:

“electronic communications service” means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services as defined in section 1 of the Electronic Communications Act, 2005;
8. On page 5, from line 58, to omit the definition of **“electronic communications service provider”**, and to substitute:

“electronic communications service provider” means—

 - (a) any person who provides an electronic communications service to the public, sections of the public, the State, or the subscribers to such service, under and in accordance with an electronic communications service licence issued to that person in terms of the Electronic Communications Act, 2005, or who is deemed to be licenced or exempted from being licenced as such in terms of that Act; and
 - (b) a person who has lawful authority to control the operation or use of a private electronic communications network used primarily for providing electronic communications services for the owner’s own use and which is exempted from being licensed in terms of the Electronic Communications Act, 2005;
9. On page 6, in line 12, to omit **““Labour Relations Act, 1995”** means the Labour Relations Act, 1995 (Act No. 66 of 1995);”
10. On page 6, in line 19, after “Constitution” to omit “of the Republic of South Africa, 1996”.
11. On page 6, in line 21, after “Constitution” to omit “of the Republic of South Africa, 1996”.
12. On page 6, in line 23, to omit **““National Environmental Management Act, 1998”** means the National Environmental Management Act, 1998 (Act No. 107 of 1998);”
13. On page 6, in line 26, after “1995” to omit “(Act No. 68 of 1995)”.
14. On page 6, in line 39, after “1995” to omit “(Act No. 68 of 1995)”.
15. On page 6, in line 40, to omit **““Prevention and Combating of Corrupt Activities Act, 2004”** means the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);”
16. On page 6, in line 44, to omit **““Protected Disclosures Act, 2000”** means the Protected Disclosures Act, 2000 (Act No. 26 of 2002);”
17. On page 6, after line 55, to insert:

“responsible party” means a “responsible party” as defined in section 1 of the Protection of Personal Information Act, 2013;
18. On page 6, before line 56, to insert:

“South African Police Service Act, 1995” means the South African Police Service Act, 1995 (Act No. 68 of 1995);
19. On page 6, in line 57, after “Constitution” to omit “of the Republic of South Africa, 1996”.

20. On page 6, from line 61, to omit the definition for “specifically designated police official”, and to substitute:

“specifically designated police official” means a police official of the rank of captain or above referred to in section 33 of the South African Police Service Act, 1995, who has been designated in writing by the National Commissioner and the National Head of the Directorate, respectively, to—

- (a) make oral application for a search warrant or an amendment of a warrant contemplated in section 30;
- (b) issue expedited preservation of data directions contemplated in section 41; or
- (c) serve or execute an order from the designated judge as contemplated in section 48(10);

21. On page 7, from line 13, to omit sub-clause (2) and to substitute:

(2) For the purposes of section 2, 3(2) or (3), or 7(1) or (2) of this Act, any failure by a responsible party to comply with—

- (a) the conditions for lawful processing of personal information referred to in Chapter 3;
- (b) section 72; or
- (c) the provisions of a code of conduct issued in terms of section 60,

of the Protection of Personal Information Act, 2013, must be dealt with in terms of Chapter 10 of that Act.

CLAUSE 2

1. On page 7, from line 26, to omit clause 2, and to substitute:

2. (1) Any person who unlawfully and intentionally performs an act in respect of—

- (a) in respect of a computer system; or
- (b) a computer data storage medium,

which places the person who performed the act or any other person in a position to commit an offence contemplated in subsection (2), section 3(1), 5(1) or 6(1), is guilty of an offence.

(2) (a) Any person who unlawfully and intentionally accesses a computer system or a computer data storage medium, is guilty of an offence.

(b) For purposes of paragraph (a)—

- (i) a person accesses a computer data storage medium, if the person—

- (aa) uses data or a computer program stored on a computer data storage medium; or
- (bb) stores data or a computer program on a computer data storage medium; and

- (ii) a person accesses a computer system, if the person—

- (aa) uses data or a computer program held in a computer system;
- (bb) stores data or a computer program on a computer data storage medium forming part of the computer system; or
- (cc) instructs, communicates with, or otherwise uses, the computer system.

(c) For purposes of paragraph (b)—

- (i) a person uses a computer program, if the person—
- (aa) copies or moves the computer program to a different location in the computer system or computer data storage medium in which it is held or to any other computer data storage medium;

- (bb) causes a computer program to perform any function; or
- (cc) obtain the output of a computer program; and
- (ii) a person uses data, if the person—
 - (aa) copies or moves the data to a different location in the computer system or computer data storage medium in which it is held or to any other computer data storage medium; or
 - (bb) obtains the output of data.

CLAUSE 3

1. On page 8, from line 8, to omit sub-clauses (2) and (3), and to substitute:
 - (2) Any person who unlawfully and intentionally possesses data or the output of data, with the knowledge that such data was intercepted unlawfully as contemplated in subsection (1), is guilty of an offence.
 - (3) Any person who is found in possession of data or the output of data, in regard to which there is a reasonable suspicion that such data was intercepted unlawfully as contemplated in subsection (1) and who is unable to give a satisfactory exculpatory account of such possession, is guilty of an offence.

CLAUSE 4

1. On page 8, in line 29, after “2(1)”, to insert “or (2)”.
2. On page 8, in line 34, after “2(1)”, to insert “or (2)”.

CLAUSE 5

1. On page 8, after line 54, to insert “held in a computer system or a computer data storage medium.”.

CLAUSE 6

1. On page 9, from line 4, to omit sub-clause (2), and to substitute:
 - (2) For purposes of this section “**interfere with a computer data storage medium or a computer system**” means to permanently or temporarily—
 - (a) alter any resource ; or
 - (b) interrupt or impair—
 - (i) the functioning;
 - (ii) the confidentiality;
 - (iii) the integrity; or
 - (iv) the availability,of a computer data storage medium or a computer system.

CLAUSE 7

1. On page 9, in line 21, after “2(1)”, to insert “or (2)”.
2. On page 9, in line 29, after “2(1)”, to insert “or (2)”.