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The Computer Misuse and Cybercrimes (Amendment) Bill, 2021333



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**THE COMPUTER MISUSE AND CYBERCRIMES
(AMENDMENT) BILL, 2021**

A Bill for

AN ACT of Parliament to amend the Computer Misuse and Cybercrimes Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Computer Misuse and Cybercrimes (Amendment) Act, 2021.

Short title.

2. Section 6 of the Computer Misuse and Cybercrimes Act (in this Act referred to as “the principal Act”) is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (j)—

Amendment of section 6 of No. 5 of 2018.

“(ja) recommend websites to be rendered inaccessible within the Republic;”

3. The principal Act is amended by inserting the following new section immediately after section 24—

Insertion of new section in No. 5 of 2018.

Pornography. **24A.** (1) A person shall not knowingly—

- (a) publish pornography through a computer system;
- (b) produce pornography for the purpose of its publication through a computer system;
- (c) download, distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any way, or make available in any way from a telecommunications apparatus pornography; or
- (d) possess pornography in a computer system or on a computer data storage medium.

(2) A person who contravenes subsection (1) commits an offence and is

liable, on conviction, to a fine not exceeding twenty million shillings or imprisonment for a term not exceeding twenty five years, or to both.

(3) It shall be a defence to a charge for an offence under subsection (1) where a publication is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, art, representation or figure is in the interest of science, literature, learning or other objects of general concerns.

(4) For purposes of this section—
“pornography” “includes any data, whether visual or audio, that depicts persons engaged in sexually explicit conduct;

“publish” includes to—

- (a) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;
- (b) having in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or
- (c) print, photograph, copy or make in any other manner whether of the same or of a different kind or nature for the purpose of doing an act referred to in paragraph (a).

4. Section 27 of the principal Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (a)—

“(aa) is likely to cause those persons to commit suicide or cause any other harm to themselves;

Amendment of
section 27 No. 5
of 2018.

(ab) is likely to cause other persons to join or participate in unlicensed and extreme religious or cult activities;”

5. Section 33 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)–

Amendment of section 33 No. 5 of 2018.

“(1A) A person who publishes or transmits electronic messages that is likely to cause other persons to join or participate in terrorist activities, commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding twenty five years, or to both.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the Computer Misuse and Cybercrimes Act, No. 5 of 2018 to provide for the prohibition against the sharing of pornography through the internet.

The Bill further seeks to prohibit the use of electronic mediums to promote terrorism, extreme religious or cult activities.

The Bill also seeks to provide an additional function of the National Computer and Cybercrimes Co-ordination Committee which is to recommend websites that may be rendered inaccessible within the country.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(5) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Paragraph 13 of Part 2 of the Fourth Schedule to the Constitution provides that the control of pornography is a function of the county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 24th March, 2021.

ADEN DUALE,
Member of Parliament.

Section 6 of No.5 of 2018 which is intended to be amended—

6. Functions of the Committee

(1) The Committee shall —

- (a) advise the Government on security related aspects touching on matters relating to blockchain technology, critical infrastructure, mobile money and trust accounts;
- (b) advise the National Security Council on computer and cybercrimes;
- (c) co-ordinate national security organs in matters relating to computer and cybercrimes;
- (d) receive and act on reports relating to computer and cybercrimes;
- (e) develop a framework to facilitate the availability, integrity and confidentiality of critical national information infrastructure including telecommunications and information systems of Kenya;
- (f) co-ordinate collection and analysis of cyber threats, and response to cyber incidents that threaten cyberspace belonging to Kenya, whether such threats or incidents of computer and cybercrime occur within or outside Kenya;
- (g) co-operate with computer incident response teams and other relevant bodies, locally and internationally on response to threats of computer and cybercrime and incidents;
- (h) establish codes of cyber-security practice and standards of performance for implementation by owners of critical national information infrastructure;
- (i) develop and manage a national public key infrastructure framework;
- (j) develop a framework for training on prevention, detection and mitigation of computer and cybercrimes and matters connected thereto; and
- (k) perform any other function conferred on it by this Act or any other written law.

(2) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

Section 27 of No.5 of 2018 which is intended to be amended—

27. Cyber harassment

(1) A person who, individually or with other persons, willfully communicates, either directly or indirectly, with another person or anyone

known to that person, commits an offence, if they know or ought to know that their conduct—

- (a) is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons; property; or
- (b) detrimentally affects that person; or
- (c) is in whole or part, of an indecent or grossly offensive nature and affects the person.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.

(3) A person may apply to Court for an order compelling a person charged with an offence under subsection (1) to refrain from—

- (a) engaging or attempting to engage in; or
- (b) enlisting the help of another person to engage in, any communication complained of under subsection (1).

(4) The Court—

- (a) may grant an interim order; and
- (b) shall hear and determine an application under subsection (4) within fourteen days.

(5) An intermediary may apply for the order under subsection (4) on behalf of a complainant under this section.

(6) A person may apply for an order under this section outside court working hours.

(7) The Court may order a service provider to provide any subscriber information in its possession for the purpose of identifying a person whose conduct is complained of under this section.

(8) A person who contravenes an order made under this section commits an offence and is liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

Section 33 of No.5 of 2018 which is intended to be amended—

33. Cyber terrorism

(1) A person who accesses or causes to be accessed a computer or computer system or network for purposes of carrying out a terrorist act, commits an offence and shall on conviction, be liable to a fine not

exceeding five million shillings or to imprisonment for a term not exceeding ten years, or to both.

(2) For the purpose of this section, "terrorist act" shall have the same meaning as assigned under the Prevention of Terrorism Act, 2012 (No. 30 of 2012).

