

COMMISSION OF COMPUTER-RELATED OFFENCES ACT (NO. 2),
B.E. 2560 (2017)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;
Given on the 23rd Day of January B.E. 2560;
Being the 2nd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to amend the law on commission of computer-related offences;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows.

Section 1. This Act is called the “Commission of Computer-Related Offences Act (No. 2), B.E. 2560 (2017)”.

Section 2.¹ This Act shall come into force after the expiration of one hundred twenty days as from the date of its publication in the Government Gazette.

Section 3. The provisions of section 4 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 4.** The Minister of Digital Economy and Society shall have charge and control of the execution of this Act and shall have the powers to appoint competent officials and issue Ministerial Regulations and Notifications in the execution of this Act.

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 134, Part 10a, dated 24th January 2017.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Government Gazette.”

Section 4. The following provisions shall be added as paragraph two and paragraph three of section 11 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“Any person who transmits to another person a computer data or an electronic mail in a manner causing annoyance to the recipient thereof without providing the recipient with an opportunity to discontinue or indicate an intention to refuse acceptance thereof at ease shall be liable to a fine not exceeding two hundred thousand Baht.

The Minister shall issue a Notification prescribing the nature and method of transmission as well as the nature and the amount of computer data or electronic mails which do not cause annoyance to recipients and the manner in which discontinuance of acceptance or an indication of an intention to refuse acceptance at ease can be made.”

Section 5. The provisions of section 12 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 12.** If the commission of an offence under section 5, section 6, section 7, section 8 or section 13 is the commission against a computer data or a computer system connected with the maintenance of national security, public security, national economic security or an infrastructure involving public interest, the offender shall be liable to imprisonment for a term of one year to seven years and to a fine of twenty thousand Baht to one hundred forty thousand Baht.

If the commission of the offence under paragraph one results in damage to such computer data or computer system, the offender shall be liable to imprisonment for a term of one year to ten years and to a fine of twenty thousand Baht to two hundred thousand Baht.

If the commission of an offence under section 9 or section 10 is the commission against a computer data or a computer system under paragraph one, the offender shall be liable to imprisonment for a term of three years to fifteen years and to a fine of sixty thousand Baht to three hundred thousand Baht.

If the commission of an offence under paragraph one or paragraph three is without any intent to murder but causes death of another person, the offender shall be liable to imprisonment for a term of five years to twenty years and to a fine of one hundred thousand Baht to four hundred thousand Baht.”

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Section 6. The following provisions shall be added as section 12/1 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“**Section 12/1.** If the commission of an offence under section 9 or section 10 causes injury to another person or any property of another person, the offender shall be liable to imprisonment for a term not exceeding ten years and to a fine not exceeding two hundred thousand Baht.

If the commission of an offence under section 9 or section 10 is without any intent to murder but causes death of another person, the offender shall be liable to imprisonment for a term of five years to twenty years and to a fine of one hundred thousand Baht to four hundred thousand Baht.”

Section 7. The following provisions shall be added as paragraph two, paragraph three, paragraph four and paragraph five of section 13 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“Any person who distributes or disseminates an instruction set specifically made for use as a tool in the commission of an offence under section 12 paragraph one or paragraph three shall be liable to imprisonment for a term of not exceeding two years or to a fine not exceeding forty thousand to or to both.

Any person who distributes or disseminates an instruction set specifically made for use as a tool in the commission of an offence under section 5, section 6, section 7, section 8, section 9, section 10 or section 11 shall, if the user thereof has committed an offence under section 12 paragraph one or paragraph three or is liable under section 12 paragraph two or paragraph four or section 12/1, also be criminally liable for the offence in respect of which such higher penalty is imposed only where he knew or could foresee that it will cause the ensuing consequence.

Any person who distributes or disseminates an instruction set specifically made for use as a tool in the commission of an offence under section 12 paragraph one or paragraph three shall, if the user thereof has committed an offence under section 12 paragraph one or paragraph three or is liable under section 12 paragraph two or paragraph four or section 12/1, also be criminally liable for the offence in respect of which such higher penalty is imposed.

In the case where the person who distributes or disseminates the instruction set is liable under paragraph one or paragraph two and also under paragraph three and paragraph four,

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such person shall be liable only for the charge in respect of which the highest rate of penalty is imposed.”

Section 8. The provisions of section 14 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 14.** Any person who commits any of the following offences shall be liable for imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand Baht or to both:

(1) dishonestly or by deceit, bringing into a computer system a computer data which is distorted or fake, whether in whole or in part, or a computer data which is false, in a manner likely to cause loss to the public, where it is not the commission of an offence of defamation under the Penal Code;

(2) bringing into a computer system a computer data which is false in a manner likely to cause loss to the maintenance of national security, public security, national economic security or an infrastructure involving national public interest or in a manner causing public anxiety;

(3) bringing into a computer system any computer data which constitutes an offence relating to security of the Kingdom or an offence relating to terrorism under the Penal Code;

(4) bringing into a computer system any computer data of a pornographic nature, provided that such computer data is accessible by the general public;

(5) disseminating or forwarding a computer data with the knowledge that it is a computer data under (1), (2), (3) or (4).

If the offence under paragraph one (1) is not committed against the public but is committed against any particular person, the perpetrator, the disseminator or the forwarder of the such computer data shall be liable for imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both and the offence shall be a compoundable offence.”

Section 9. The provisions of section 15 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

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“**Section 15.** Any service provider who collaborates in, gives consent to or connives at the commission of an offence under section 14 in a computer system under his control shall be liable to the same penalty as that to be inflicted upon the offender under section 14.

The Minister shall issue a Notification prescribing procedures for giving warnings, discontinuing the proliferation of the computer data and removing such computer data from a computer system.

If the service provider can prove that he has complied with the Notification of the Minister issued under paragraph two, such person shall not be liable.”

Section 10. The provisions of section 16 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 16.** Any person who brings into a computer system accessible by the public a computer data which appears to be a photograph of another person, where such photograph has been created, edited, supplemented or modified by an electronic means or any other means, in a manner likely to cause that other person to be defamed, insulted, hated or embarrassed shall be liable for imprisonment for a term not exceeding three years and to a fine not exceeding two hundred thousand Baht.

If the act under paragraph one is committed against a photograph of the deceased and such act is likely to cause the deceased’s parent, spouse or child to be defamed, insulted, hated or embarrassed, the perpetrator shall be liable to the same penalty as that provided in paragraph one.

If the act under paragraph one or paragraph two subsists in the bringing into a computer system in good faith, which constitutes a fair comment on any person or matter which is ordinarily made by a member of the public, the perpetrator shall not be guilty.

The offences under paragraph one and paragraph two are compoundable offences.

If the injured person for the offence under paragraph one or paragraph two dies before making a complaint, the parent, spouse or child of the injured person shall be entitled to make a complaint and shall be deemed to be the injured person.”

Section 11. The following provisions shall be added as section 16/1 and section 16/2 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

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“**Section 16/1.** In a case involving an offence under section 14 or section 16, the Court, when a judgment is rendered for convicting the accused, may give an order:

- (1) requiring destruction of the data under such section;
- (2) requiring publication or dissemination of the judgment in whole or in part via electronic media, radio broadcasting, radio and television broadcasting, newspapers or any other media as the Court deems appropriate, provided that the costs incurred in the publication or dissemination shall be borne by the accused;
- (3) requiring other action as the Court deems appropriate in mitigation of loss resulting from the commission of such offence.

Section 16/2. Ant person who knows that the computer data in his possession is the data ordered by the Court to be destroyed under section 16/1 shall destroy such data, failing which such person shall be liable to one half of the penalty provided under section 14 or section 16, as the case may be.”

Section 12. The following provisions shall be added as section 17/1 in Chapter I, Offences Related to Computers, of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“**Section 17/1.** The offences under section 5, section 6, section 7, section 11, section 13 paragraph one, section 16/2, section 23, section 24 and section 27 may be settled, by way of payment of a fine, by the Settlement Committee appointed by the Minister.

The Settlement Committee appointed by the Minister under paragraph one shall consist of three members, one of which must be an inquiry official under the Criminal Procedure Code.

When the Settlement Committee has conducted a settlement in any case and the alleged offender has made payment of a fine in response to the settlement within the period of time specified by the Settlement Committee, such case shall be deemed to have been extinguished under the Criminal Procedure Code.

In the case where the alleged offender fails to may payment of a fine within the period of time specified, the period of prescription for the purpose of reinstating an action shall start to run as from the date on which such period of time expires.”

Section 13. The provisions of section 18 and section 19 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

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“**Section 18.** Subject to section 19, for the purpose of investigations and inquiries in the case where there is a reasonable cause to believe that the commission of an offence under this Act has occurred or in the case where a request is made under paragraph two, the competent official shall have any of the following powers to the extent necessary for using the matters concerned as evidence involving the commission of the offence and in the finding of the offender:

(1) addressing a written enquiry to, or issuing a summons on, a person connected with the commission of the offence for the purpose of giving statements, furnishing written explanations or furnishing documents, data or any other evidence in an intelligible form;

(2) summoning computer traffic data from providers of services relating to communications via computer systems or from other persons concerned;

(3) ordering a service provider to hand over to the competent official data concerning users, which are required to be retained under section 26 or which are in possession or in custody of the service provider, or to retain the such data;

(4) making a copy of computer data or computer traffic data from a computer system in respect of which there is a reasonable cause to believe that an offence is committed therein, in the case where such computer system is not yet in possession of the competent official;

(5) ordering the person having in possession or custody computer data or equipment used for retaining computer data to hand over such computer data or equipment to the competent official;

(6) inspecting or accessing a computer system, a computer data, a computer traffic data or equipment used for retaining computer data of any person, which is evidence or may be used as evidence in connection with the commission of an offence or which facilitates inquiries leading to the finding of offenders, and also ordering such person to furnish relevant computer data or computer traffic data to the extent necessary;

(7) decrypting computer data of any person or ordering persons concerned in the encryption of computer data to undertake decryption thereof or co-operate with the competent official in such decryption;

(8) seizing or attaching a computer system to the extent necessary only for the purpose of acquiring the knowledge of details of offences and offenders.

For the purpose of investigations and inquiries by inquiry officials under the Criminal Procedure Code in criminal offences under other laws involving the use of a computer system, a computer data or equipment for the retention of computer data as an element or part of the commission of the offence or involving a computer data connected with the commission of a criminal

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offence under other laws, the inquiry official may request the competent official under paragraph one to take action under paragraph one, or if such facts are apparent to the competent official on account of the performance of duties under this Act, the competent official shall expeditiously gather facts and evidence and make a notification to officials concerned for further proceedings.

The person receiving a request from the competent official under paragraph one (1), (2) and (3) shall take action in response to the request without delay, provided that it shall not be later than seven days as from the date of receipt of the request, or within the period of time specified by the competent official, which must not be less than seven days and must not be more than fifteen days except in the case where permission is obtained from the competent official when there exists a reasonable cause. In this regard, the Minister may, by publication in the Government Gazette, prescribe the period of time within which action must be taken by service providers, as appropriate for respective types of service providers.

Section 19. In exercising the powers of the competent official under section 18 (4), (5), (6), (7) and (8), the competent official shall file a motion to the Court of competent jurisdiction for giving an order permitting the competent official to take action for which the motion is filed. In this regard, the motion must indicate, to the extent possible, a reasonable cause to believe that any person commits or is about to commit any particular act which is an offence, a reason for the exercise of the power, the nature of the commission of the offence and details as to the equipment used in the commission of the offence as well as the offender. The Court shall expeditiously consider such motion.

When the Court gives an order granting permission, the competent official shall, before taking action in pursuit of the Court's order, furnish a copy of the record of the reasonable cause leading to the exercise of the power under section 18 (4), (5), (6), (7) and (8) to the owner or possessor of the computer system concerned for the evidentiary purpose. But, if the owner or possessor of the computer is not at that place, the competent official shall furnish such copy of the record to such owner or possessor at the earliest possible opportunity.

The competent official leading the performance of the action under section 18 (4), (5), (6), (7) and (8) shall furnish a copy of the record of details thereof and reasons therefor to the Court of competent jurisdiction within forty-eight hours as from the commencement of the action, for the evidentiary purpose.

The making a copy of computer data under section 18 (4) shall be permissible only where there is a reasonable cause to believe that the commission of an offence has occurred and shall not cause impediment to the operation of business of the owner or possessor of such computer data to the extent in excess of necessity.

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In conducting a seizure or attachment under section 18 (8), in addition to the requirement that a copy of the written instrument indicating the seizure or attachment be furnished to the owner or possessor of the computer system in question for the evidentiary purpose, the competent official shall not seize or attach the same for a period exceeding thirty days. In the case where it is necessary to have a seizure or attachment for a longer period, a motion may be filed with the Court of competent jurisdiction for an extension of the period of seizure or attachment, provided that the Court may grant extension of time on one or more occasions, with the aggregate period not exceeding sixty days. When the necessity for the seizure or attachment ceases to exist or such period of time expires, the competent official must return the computer system seized or withdraw the attachment forthwith.

The written instrument indicating the seizure or attachment under paragraph five shall be as prescribed in the Ministerial Regulation.”

Section 14. The provisions of section 20 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 20.** In the case where there occurs the proliferation of the following computer data, the competent official, with the approval of the Minister, may file with the Court of competent jurisdiction a motion, accompanied by supporting evidence, for an order compelling the discontinuance of the proliferation of the computer data or the deletion thereof from a computer system:

- (1) a computer data constituting an offence under this Act;
- (2) a computer data likely to affect the security of the Kingdom as provided in Part II, Title I or Title I/I of the Penal Code;
- (3) a computer data constituting a criminal offence under the law relating to intellectual property or other law, provided that such computer data is, by nature, against public order or good morals of the public and a request is made by the official under such law or the inquiry official under the Criminal Procedure Code.

In the case of the proliferation of a computer data which is, by nature, against public order or good morals of the public, the Minister, with the approval of the committee on computer data screening, may entrust the competent official to file with the Court of competent jurisdiction a motion, accompanied by supporting evidence, for an order compelling the discontinuance of the proliferation of the computer data or the deletion thereof from a computer system. In this regard, the provisions on tribunals with the powers to conduct administrative

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proceedings under the law on administrative procedures shall apply to a meeting of the committee on computer data screening *mutatis mutandis*.

The Minister shall appoint one or more committees on computer data screening under paragraph two. Each committee shall consist of nine members, three of whom must be from representatives of the private sector in the field of human rights, mass communication or information technology or other relevant fields, and members shall be entitled to remuneration in accordance with the rules prescribed by the Minister with the approval of the Ministry of Finance.

The Criminal Procedure Code shall apply to the proceedings of the Court under paragraph one and paragraph two *mutatis mutandis*. In the case where the Court issues an order compelling the discontinuance of the proliferation of computer data or the deletion thereof under paragraph one and paragraph two, the competent official may carry out the discontinuance of the proliferation of computer data or the deletion thereof by himself or may order service providers to do so, provided that the Minister shall, by Notification, prescribe the rules, a period of time and practice procedures for the discontinuance of the proliferation of computer data or the deletion thereof by the competent official or service providers with a view to assuring uniformity, having regard to changing technological development, unless otherwise ordered by the Court.

In the case of urgent necessity, the competent official may file a motion under paragraph one prior to the approval of the Minister, or the competent official with the approval of the committee on computer data screening may file a motion under paragraph two prior to the entrustment by the Minister, provided that it shall expeditiously be reported to the Minister.”

Section 15. The provisions of paragraph two of section 21 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“Undesirable instruction sets under paragraph one means instruction sets which cause a computer data or a computer system or other instruction sets to be damaged, destroyed, modified, supplemented, interrupted or function in departure from the instruction or in any other manner prescribed in the Ministerial Regulation, except undesirable instruction sets which may be used for preventing or correcting the aforesaid instruction sets, provided that the Minister may, by publication in the Government Gazette, prescribe the names, descriptions or details of undesirable instruction sets which may be used for preventing or correcting undesirable instruction sets.”

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Section 16. The provisions of section 22, section 23, section 24 and section 25 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 22.** The competent official and the inquiry official in the case under section 18 paragraph two shall not disclose or hand over computer data, computer traffic data or users’ data acquired under section 18 to any person.

The provisions of paragraph one shall not apply to any act performed for the purpose of taking legal proceedings against offenders under this Act or offenders under other laws in the case under section 18 paragraph two or for the purpose of taking legal proceedings against the competent official in connection with the unlawful exercise of powers or against the inquiry official insofar as it is concerned with the unlawful performance of duties under section 18 paragraph two or any act done as ordered or permitted by the Court.

Any competent official or inquiry official who violates paragraph one shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both.

Section 23. Any competent official or inquiry official in the case under section 18 paragraph two who does any negligent act causing another person to know computer data, computer traffic data or users’ data acquired under section 18 shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

Section 24. Any person who knows computer data, computer traffic data or users’ data acquired by the competent official or the inquiry official under section 18 and discloses such data to any person shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding forty thousand Baht or to both.

Section 25. Data, computer data or computer traffic data acquired by the competent official under this Act or acquired by the inquiry official under section 18 paragraph two shall be admissible into evidence in accordance with the provisions of the Criminal Procedure Code or other laws on evidence taking, provided that they have not occurred in consequence of any inducement, promise, threat or deceit or any other unlawful means.”

Section 17. The provisions of paragraph one of section 26 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) shall be repealed and replaced by the following:

“**Section 26.** A service provider must retain computer traffic data for a period of not less than ninety days as from the date on which such data enter a computer system, provided

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that, in the case of necessity, the competent official may order any service provider to retain computer traffic data for a period exceeding ninety days but not exceeding two years as a matter of an individually exceptional case and on an *ad hoc* basis.”

Section 18. The following provisions shall be added as paragraph two and paragraph three of section 28 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“The person appointed as the competent official under this Act may receive special remuneration as prescribed by the Minister with the approval of the Ministry of Finance.

In determining special remuneration, regard must be had to missions, duties, knowledge, expertise, deficient availability of performers of duties or a high turnover of personnel in the bureaucracy, the quality of work and the upholding of justice, provided that comparison shall also be made to remuneration of other personnel in the line of justice administration.”

Section 19. The following provisions shall be added as section 31 of the Commission of Computer-Related Offences Act, B.E. 2550 (2007):

“**Section 31.** Expenses on the following matters and the procedures for disbursement thereof shall be in accordance with the Rule prescribed by the Minister with the approval of the Ministry of Finance:

- (1) investigations, the finding of data and the gathering of evidence in cases involving offences under this Act;
- (2) the proceeding under section 18 paragraph one (4), (5), (6), (7) and (8) and section 20;
- (3) any other proceeding necessary for the prevention and suppression of the commission of offences under this Act.”

Section 20. All Rules or Notifications issued under the Commission of Computer-Related Offences Act, B.E. 2550 (2007) as in force prior to the date on which this Act comes into force shall continue to be in force insofar as they are not contrary to or inconsistent with the provisions of the Commission of Computer-Related Offences Act, B.E. 2550 (2007) as amended by this Act until Rules or Notifications to be issued under the Commission of Computer-Related Offences Act, B.E. 2550 (2007) as amended by this Act come into force.

The issuance of Rules or Notifications under paragraph one shall be completed within sixty days as from the date on which this Act comes into force. If their completion cannot

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be achieved, the Minister of Digital Economy and Society shall report the reasons therefor to the Council of Ministers for information.

Section 21. The Minister of Digital Economy and Society shall have charge and control of the execution of this Act.

Countersigned by:

General Prayut Chan-o-cha

Prime Minister

Office of the Council of State

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