

A BILL

FOR

AN ACT TO AMEND THE CRIMINAL CODE ACT, CAP. C38 LAWS OF THE
FEDERATION OF NIGERIA, 2004 IN ORDER TO PROVIDE FOR OFFENCES AND
PENALTIES RELATING TO COMPUTER MISUSE AND CYBERCRIMES

Sponsored by Hon. Garba Ibrahim Muhammed

[] Commencement

BE IT ENACTED by the National Assembly of the Federal
Republic of Nigeria as follows;

- 1 1. The Criminal Code Act, CAP.C38 LFN, 2004 (herein after Amendment of
2 called "the Principal Act") is amended as set out below: Cap. C38 LFN,
3 2. The Principal Act is amended by inserting new chapter 56 as Insert new
4 follows: Chapter 56
- 5 COMPUTER MISUSE AND CYBERCRIMES OFFENCES
- 6 3.-(1) Any person, who without authorization or in excess of Unlawful access
7 authorization, accesses in whole or in part, a computer system or network, to a computer
- 8 commits an offence and is liable on conviction to a fine of not more than
- 9 N10,000,000:00 or imprisonment for a term of 5 years or to both.
- 10 (2) Where the offence provided in subsection (1) is committed with
- 11 the intent of obtaining computer data, securing access to any program,
- 12 commercial or industrial secrets or confidential information, the
- 13 punishment shall be a fine of not more than N20,000,000.00 or
- 14 imprisonment for a term of 10 years or to both.
- 15 (3) Any person who, commits an offence under this section, uses
- 16 any device to avoid detection or otherwise prevent identification with the act
- 17 or omission, commits an" offence or facilitates the commission of such
- 18 offence and is liable on conviction to a fine of not more than
- 19 N20,000,000:00 or imprisonment for a term of 10 years or to both.

Unlawful
interception of
communications

1 4. Any person, who intentionally and without authorization,
2 intercepts the transmissions of non-public computer data, content data or
3 traffic data, including electromagnetic emissions or signals from a computer
4 system or network carrying or emitting such, to or from a computer, computer
5 system or connected system or network; commits an offence and liable on
6 conviction to a fine of not more than N10,000,000:00 or imprisonment for a
7 term of 5 years or to both.

Unauthorized
modification of
computer program
or data

8 5.-(1) Any person who directly or indirectly does an act without
9 authority and with intent to causes an unauthorized modification of any
10 program or data held in any computer system or network, commits an offence
11 and liable on conviction to imprisonment a fine of not more than
12 N15,000,000:00 and imprisonment for a term of 8 years or to both.

13 (2) Any person who damages, deletes, impairs, restrict or suppresses
14 data within computer systems or networks, including data transfer from a
15 computer system by any person without authority or in excess of authority,
16 commits an offence and liable on conviction to a fine of not more than
17 N15,000,000:00 or imprisonment for a term of 8 years or to both.

18 (3) For the purpose of this section, a modification of any program or
19 data held in any computer system or network takes place if, by the operation of
20 any function of the computer, computer system or network concerned:

21 (i) any program or data held in it is altered or erased;

22 (ii) any program or data is added to or removed from any program or
23 data held in it;

24 (iii) any act which impairs the normal operation of any computer,
25 computer system or network concerned or its reliability;

26 (iv) access to any program or data held in a computer is hindered or
27 prevented.

28 (4) In this section:

29 (a) a reference to doing an act includes a reference to causing an act to
30 be done;

1 (b) "act" includes a series of acts;

2 (c) a reference to impairing, preventing or hindering something
3 includes a reference to doing so temporarily.

4 6. Any person, who intentionally and without authorization,
5 intercepts the transmissions of non-public computer data, content data or
6 traffic data, including electromagnetic emissions or signals from a computer
7 system or network carrying or emitting such, to or from a computer,
8 computer system or connected system or network; commits an offence and
9 liable on conviction to a fine of not more than N10,000,000:00 or
10 imprisonment for a term of 5 years or to both.

System
interference

11 7.-(1) Any person who directly or indirectly does an act without
12 authority and with intent to causes an unauthorized modification of any
13 program or data held in any computer system or network, commits an
14 offence and liable on conviction to imprisonment a fine of not more than
15 N15,000,000:00 and imprisonment for a term of 8 years or to both.

Unauthorized
modification of
computer program
or data

16 (2) Any person who damages, deletes, impairs, restrict or
17 suppresses data within computer systems or networks, including data
18 transfer from a computer system by any person without authority or in
19 excess of authority, commits and offence and liable on conviction to a fine of
20 not more than N15,000,000.00 or imprisonment for a term of 8 years or to
21 both.

22 (3) For the purpose of this section, a modification of any program
23 or data held in any computer system or network takes place if, by the
24 operation of any function of the computer, computer system or network
25 concerned-

26 (i) any program or data held in it is altered or erased;

27 (ii) any program or data is added to or removed from any program
28 or data held in it; or

29 (iii) any act which impairs the normal operation of any computer,
30 computer system or network concerned or its reliability.

1 (iv) access to any program or data held in a computer is hindered or
2 prevented.

3 (4) In this section-

4 (a) a reference to doing an act includes a reference to causing an act to
5 be done;

6 (b) "act" includes a series of acts;

7 (c) a reference to impairing, preventing or hindering something
8 includes a reference to doing so temporarily.

System
interference

9 8. Any person who without authority or in excess of authority,
10 intentionally does an act which causes directly or indirectly the serious
11 hindering of the functioning of a computer system by inputting, transmitting,
12 damaging, deleting, deteriorating, altering or suppressing computer data or any
13 other form of interference in the computer system, which prevents the
14 computer system or any part thereof, from functioning in accordance with its
15 intended purpose, commits an offence and liable on conviction to a fine of not
16 more than N15,000,000.00 or imprisonment for a term of 10 years or to both.

Misuse of devices

17 9.-(1) Any person who unlawfully supplies, produces, adapts,
18 manipulates, procures for use, imports, exports, distributes, offers for sale or
19 otherwise makes available-

20 (a) any article, devices, including a computer program or a computer
21 designed or adopted for the purpose of committing an offence under section 2,
22 3, 4 or 5 of this Act or assisting in the commission of an offence;

23 (b) a computer password, access code or similar data by which the
24 whole or any part of a computer, computer system or network is capable of
25 being accessed for the purpose of committing an offence under this Act, or

26 (c) any software, device designed primarily to overcome security
27 measures in any computer, computer system or network with the intent that the
28 device be utilized for the purpose of violating any provision of this Act,
29 commits an offence and liable on conviction to a fine of not more than
30 N20,000,000.00 or imprisonment for a term of 15 years or to both; and

1 (d) In this section "article" includes any program or data held in
2 electronic form.

3 (2) Any person who with intent to commit an offence under this
4 Act, has in his possession any device or program referred to in subsection 1
5 of this section, commits an offence and shall be liable on conviction to a fine
6 of not more than N10,000,000.00 or imprisonment for a term of 5 years or to
7 both.

8 (3) Any person who, knowingly and without authority, discloses
9 any password, access code or any other means of gaining access to any
10 program or data held in any computer or network for any unlawful purpose
11 or gain, commits an offence and shall be liable on conviction to a fine of not
12 more than N5,000,000.00 imprisonment for a term of 2 years or to both.

13 (4) Where the offence under subsection (1) of this section results in
14 substantial loss or damage, the offender shall be liable to a fine of not more
15 than N25,000,000.00 imprisonment for a term of 15 years or to both.

16 (5) Any person who with intent to commit any offence under this
17 Act uses any automated means or device or any computer program or
18 software to retrieve, collect and store password, access code or any means of
19 gaining access to any program, data or database held in any computer,
20 commits an offence and shall be liable on conviction to a fine of not more
21 than N10,000,000.00 imprisonment for a term of 5 years or to both.

22 **10.** Any person who knowingly accesses any computer or network
23 and inputs, alters, deletes or suppresses any data resulting in inauthentic data
24 with the intention that such authentic data be considered or acted upon as if it
25 were authentic or genuine, whether or not such data is readable or
26 intelligible, commit an offence and shall be liable on conviction to a fine of
27 not more than N15,000,000.00 imprisonment for a term of 10 years or to
28 both.

Computer related
forgery

29 **11.-(1)** Any person who knowingly and without authority or in
30 excess of authority causes any loss of property to another by altering,

Computer related
fraud

1 erasing, inputting or suppressing any data held in any computer, whether or not
2 for the purpose of conferring any economic benefits whether for himself or
3 another person, commits an offence and shall be liable on conviction to a fine of
4 not more than N25,000,000:00 or imprisonment for a term of 15 years or to
5 both.

6 (2) Any person who with intent to defraud sends electronic message to
7 a recipient, where such electronic message materially misrepresent any fact or
8 set of facts upon which reliance the recipient or another person is caused to
9 suffer any damage or loss, commits an offence and shall be liable on conviction
10 to a fine of not more than N25,000,000.00 imprisonment for a term of 15 years
11 or to both.

Identity theft
and impersonation

12 12. Any person who in the course of using a computer, computer
13 system or network-

14 (a) knowingly obtains or possesses another person or entity's identity
15 information with the intent to deceive or defraud, or

16 (b) fraudulently impersonates another entity or person, living or dead,
17 with intent to:

18 (i) gain advantage for himself or another person;

19 (ii) obtain any property or an interest in any property;

20 (iii) Cause disadvantage to the entity or person being impersonated or
21 another person; or

22 (iv) avoid arrest or prosecution or to obstruct, pervert or defeat the
23 course of justice, commits an offence and is liable on conviction to
24 imprisonment for a term of 10 years or a fine of not more than N15,000,000.00
25 or to both.

Child pornography
and related
offences

26 13.-(1) Any person who intentionally uses any computer or network
27 system in or for-

28 (a) producing child pornography for the purpose of its distribution;

29 (b) offering or making available child pornography;

30 (c) distributing or transmitting child pornography;

(d) procuring child pornography for oneself or for another person;

(e) possessing child pornography in a computer system or on a computer-data storage medium. Commits an offence under this Act and shall be liable on conviction-

(i) In the case of paragraphs (a), (b) and (c) to a fine of not more than N20,000,000.00 imprisonment for a term of 10 years or to both, and

(ii) In the case of paragraphs (d) and (e) of this subsection, to a fine of not more than N10,000,000.00 or imprisonment for a term of not more than 5 years or to both.

(2) For the purpose of subsection (1) above, the term "child pornography" shall include pornographic material that visually depicts-

(a) a minor engaged in sexually explicit conduct;

(b) a person appearing to be a minor engaged in sexually explicit conduct;

(c) realistic images representing a minor engaged in sexually explicit conduct; and

(d) any form of recording or writing from which a visual image, including a computer generated image or cached on a computer as a result of an Internet browsing depicting explicit sexual activities involving a child.

(3) For the purpose of this section, the term "child" or "minor" shall include a person below 18 years of age.

14.-(1) Any person who, intentionally takes or makes use of a name, business name, trademark, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Northern Nigeria, on the internet or any other computer network, without authority or right, or for the purpose of interfering with their use by the owner, registrant or legitimate prior user, commits an offence under this Act and shall be liable on conviction to a fine of not more than N10,000,000.00 imprisonment for a term of 5 years or to both.

Cyber squatting

1 (2) in awarding any penalty against an offender under this section, a
2 court shall have regard to the following-

3 (a) a refusal by the offender to relinquish, upon formal request by the
4 rightful owner of the name, business name, trademark, domain name, or other
5 word or phrase registered, owned or in use by any individual, body corporate or
6 belonging to either the Federal, State or Local Government in Nigeria; or

7 (b) an attempt by the offender to obtain compensation in any form for
8 the release to the rightful owner for use in the internet of the name, business
9 name, trademark, domain name or other word or phrase registered, owned or in
10 use by any individual, body corporate or belonging to either the Federal State
11 or Local Government of Nigeria.

12 (3) In addition to the penalty specified under this section, the court
13 may make an order directing the offender to relinquish such registered name,
14 mark, trademark, domain name, or other word or phrase to the rightful owner.

Computer related
forgery

15 15. Any person who knowingly accesses any computer or network
16 and inputs, alters, deletes or suppresses any data resulting in inauthentic data
17 with the intention that such authentic data be considered or acted upon as if it
18 were authentic or genuine, whether or not such data is readable or intelligible,
19 commit an offence and shall be liable on conviction to a fine of not more than
20 N15,000,000.00 imprisonment for a term of 10 years or to both.

Computer related
fraud

21 16.-(1) Any person who knowingly and without authority or in excess
22 of authority causes any loss of property to another by altering, erasing,
23 inputting or suppressing any data held in any computer, whether or not for the
24 purpose of conferring any economic benefits whether for himself or another
25 person, commits an offence and shall be liable on conviction to a fine of not
26 more than N25,000,000:00 or imprisonment for a term of 15 years or to both.

27 (2) Any person who with intent to defraud sends electronic message to
28 a recipient, where such electronic message materially misrepresent any fact or
29 set of facts upon which reliance the recipient or another person is caused to
30 suffer any damage or loss, commits an offence and shall be liable on conviction

1 to a fine of not more than N25,000,000.00 imprisonment for a term of 15
2 years or to both.

3 17. Any person who in the course of using a computer, computer Identity theft and
4 system or network: impersonation

5 (a) knowingly obtains or possesses another person or entity's
6 identity information with the intent to deceive or defraud, or

7 (b) fraudulently impersonates another entity or person, living or
8 dead, with intent to:

9 (i) gain advantage for himself or another person;

10 (ii) obtain any property or an interest in any property;

11 (iii) Cause disadvantage to the entity or person being impersonated
12 or another person; or

13 (iv) avoid arrest or prosecution or to obstruct, pervert or defeat the
14 course of justice, commits an offence and is liable on conviction to
15 imprisonment for a term of 10 years or a fine of not more than
16 N15,000,000.00 or to both.

17 18.-(1) Any person who intentionally uses any computer or Child
18 network system in or for: pornography
and related
offences

19 (a) producing child pornography for the purpose of its distribution;

20 (b) offering or making available child pornography;

21 (c) distributing or transmitting child pornography;

22 (d) procuring child pornography for oneself or for another person;

23 (e) possessing child pornography in a computer system or on a
24 computer-data storage medium. Commits an offence under this Act and
25 shall be liable on conviction:

26 (i) In the case of paragraphs (a), (b) and (c) to a fine of not more
27 than N20,000,000.00 imprisonment for a term of 10 years or to both, and

28 (ii) In the case of paragraphs (d) and (e) of this subsection, to a fine
29 of not more than N10,000,000.00 or imprisonment for a term of not more
30 than 5 years or to both.

1 (2) For the purpose of subsection (1) above, the term "child
2 pornography" shall include pornographic material that visually depicts:

3 (a) a minor engaged in sexually explicit conduct;

4 (b) a person appearing to be a minor engaged in sexually explicit
5 conduct and

6 (c) realistic images representing a minor engaged in sexually explicit
7 conduct;

8 (d) any form of recording or writing from which a visual image,
9 including a computer generated image or cached on a computer as a result of an
10 Internet browsing depicting explicit sexual activities involving a child.

11 (3) For the purpose of this section, the term "child" or "minor" shall
12 include a person below 18 years of age.

Cyber squatting

13 19.-(1) Any person who, intentionally takes or makes use of a name,
14 business name, trademark, domain name or other word or phrase registered,
15 owned or in use by any individual, body corporate or belonging to either the
16 Federal, State or Local Governments in Northern Nigeria, on the internet or
17 any other computer network, without authority or right, or for the purpose of
18 interfering with their use by the owner, registrant or legitimate prior user,
19 commits an offence under this Act and shall be liable on conviction to a fine of
20 not more than N10,000,000.00 imprisonment for a term of 5 years or to both.

21 (2) in awarding any penalty against an offender under this section, a
22 court shall have regard to the following-

23 (a) a refusal by the offender to relinquish, upon formal request by the
24 rightful owner of the name, business name, trademark, domain name, or other
25 word or phrase registered, owned or in use by any individual, body corporate or
26 belonging to either the Federal, State or Local Government in Nigeria; or

27 (b) an attempt by the offender to obtain compensation in any form for
28 the release to the rightful owner for use in the internet of the name, business
29 name, trademark, domain name or other word or phrase registered, owned or in
30 use by any individual, body corporate or belonging to either the Federal State

1 or Local Government of Nigeria.

2 (3) In addition to the penalty specified under this section, the court
3 may make an order directing the offender to relinquish such registered
4 name, mark, trademark, domain name, or other word or phrase to the rightful
5 owner.

6 20.-(1) Any person that accesses or causes to be accessed any Cyber terrorism
7 computer or computer system or network for purposes of terrorism,
8 commits an offence and liable on conviction to a fine of not more than
9 N20,000,000.00 or imprisonment for a term of 10 years or to both.

10 (2) For the purposes of this section, terrorism shall have the same
11 meaning under subsection (2) of section 1 of the Terrorism (Prevention) Act,
12 2011.

13 21.-(1) Any person who-

14 (a) distributes or otherwise makes available, racist and xenophobic Racist and
15 materials to the public through a computer system or network; and xenophobic
16 offences

17 (b) threatens, through a computer system or network, with the
18 commission of a criminal offence-

19 (i) persons for the reason that they belong to a group, distinguished
20 by race, colour, descent, national or ethnic origin, as well origin, as well as,
21 religion, if used as a pretext for any of these factors, or

22 (ii) a group of persons which is distinguished by any of these
23 characteristics,

24 (c) insults publicly, through a computer system or network:

25 (i) persons for the reason that they belong to a group distinguished
26 by race, colour, descent or national or ethnic origin, as well as religion, if
27 used as a pretext for any of these factors; or

28 (ii) a group of persons which is distinguished by any of these
29 characteristics or;

30 (d) distributes or otherwise makes available, through a computer
system to the public, material which denies, approves or justifies acts

1 constituting genocide or crimes against humanity, as defined under the Rome
2 Statutes of the International Criminal Court, 1998. commits an offence and
3 shall be liable on conviction to a fine of not more than N10,000,000.00 or
4 imprisonment for a term of 5 years or to both.

5 (2) For the purpose of subsection (1) above, the term "racist and
6 xenophobic material" means any written or printed material, any image or any
7 other representation of ideas or theories, which advocates, promotes or incites
8 hatred, discrimination or violence, against any individual or group of
9 individuals, based on race, colour, descent or national or ethnic origin, as well
10 as religion if used as a pretext of any of these factors.

Records retention
and protection of
data by service
providers

11 **22.-(1)** A service provider shall keep all traffic data and subscriber
12 information as may be prescribed by the agency for the time being responsible
13 for the regulation of communication services in Nigeria.

14 (2) A service provider shall, at the request of the agency referred to in
15 subsection (1) of this section or any law enforcement agency:

16 (a) preserve, hold or retain any traffic data, subscriber information or
17 related content, or

18 (b) release any information required to be kept under subsection (1) of
19 this section.

20 (3) A law enforcement agency may, through its authorized officer,
21 request for release of any information in respect of subsection (2)(b) of this
22 section and it shall be the duty of the service provider to comply;

23 (4) Any data retained, processed or retrieved by the service provider at
24 the request of any law enforcement agency under this Act shall not be utilized
25 except for legitimate purposes as may be provided for under this Act, any other
26 legislation, regulation or by an order of a court of competent jurisdiction.

27 (5) Anyone exercising any function under this section shall have due
28 regard to the individual right to privacy under the Constitution of the Federal
29 Republic of Nigeria, 1999 and shall take appropriate measures to safeguard the
30 confidentiality of the data retained, processed or retrieved for the purpose of

1 law enforcement.

2 (6) Any person who contravenes the provisions of subsections (1) -
3 (4) of this section commits an offence and shall be liable on conviction to a
4 fine of not more than N5,000,000:00 or imprisonment for term of 2 year or to
5 both.

6 **23.** Where there are reasonable grounds to suspect that the content
7 of any electronic communication is reasonably required for the purposes of a
8 criminal investigation or proceedings, a judge may on the basis of
9 information on oath;

Interception of
electronic
communications

10 (a) order a service provider, through the application of technical
11 means to collect, record, permit or assist competent authorities with the
12 collection or recording of content data associated with specified
13 communications transmitted by means of a computer system; or

14 (b) authorize a law enforcement officer to collect or record such
15 data through application of technical means.

16 **24.-(1)** It shall be the duty of every service provider in Nigeria to
17 comply with all the provisions of this Act and disclose any information
18 requested by any law enforcement agency or otherwise render assistance
19 however in any inquiry or proceeding under this Act.

Failure of service
provider to
perform certain
duties

20 (2) Without prejudice to the generality of the foregoing, a service
21 provider shall, at the request of any law enforcement agency in Nigeria or at
22 its own initiatives, provide assistance towards:

23 (a) the identification, apprehension and prosecution of offenders;

24 (b) the identification, tracking and tracing of proceeds of any
25 property, equipment or device used in the commission of any offence; or

26 (c) the freezing, removal, erasure or cancellation of the services of
27 the offender which enables the offender to either commit the offence or hide
28 or preserve the proceeds of any offence or any property, equipment or device
29 used in the commission of the offence.

30 (3) Any service provide who contravenes the provisions of

1 subsection (1) and (2) of this section, commits an offence and shall be liable on
2 conviction to a fine of not more than N10,000,000.00.

3 (4) In addition to the punishment prescribed under section (3) and
4 subject to the provisions of section 18 of this Act, each director, manager or
5 officer of the service provider shall be liable on conviction to a fine of not more
6 than N5,000,000.00 or imprisonment for a term of 2 years or to both.

Attempt,
conspiracy, aiding
and abetting

7 25. Any person who:

8 (a) attempts to commit any offence under this Act;

9 (b) does any act preparatory to or in furtherance of the commission of
10 an offence under this Act; or

11 (c) abets, aids or conspires to commit any offence under this Act,
12 commits an offence and shall be liable on conviction to the punishment
13 provided for such an offence under this Act.

Corporate liability

14 26. A body corporate that commits an offence under this Act shall be
15 liable on conviction to a fine of not more than N1000,000.00 and any person who
16 at the time of the commission of the offence was a chief executive officer,
17 director, secretary, manager or other similar officer of the body corporate or
18 was purporting to act in any such capacity shall be liable on conviction to
19 imprisonment for a term of 2 years or a fine or not more than N5,000,000.00 or
20 to both.

21 Provided that, nothing contained in this section shall render any person liable to
22 any punishment if he proves that the offence was committed without his
23 knowledge or that he exercised all due diligence to prevent the commission of
24 such offence.

Cyber stalking

25 27. Any person who with intent to commit an offence under this
26 section:

27 (1) If he uses electronic mail or communication by means of words or
28 language threatening to inflict bodily harm to any person or to that person's
29 child, sibling, spouse, or dependant, or physical injury to the property of any

1 person, or for the purpose of extorting money or other things of value from
2 any person;

3 (2) If uses electronic mail or communication to communicate to
4 another repeatedly whether or not conversation ensues, for the purpose of
5 abusing, annoying, threatening, terrifying, harassing or embarrassing any
6 person;

7 (3) If knowingly permits an electronic communication device
8 under the person's control to be used for any purpose prohibited by this
9 section. Commits an offence and shall be liable on conviction to a fine of not
10 more than N5,000,000.00 or imprisonment for a term of 3 years or to both.

11 **28.** Any person who with intent to commit an offence under this Cyber harassment
12 section:

13 (1) If he pursues a conduct which causes another to fear where the
14 accused knew or ought to know that the course of conduct amount to
15 harassment through a computer or computer network;

16 (2) If he communicates obscene, vulgar, profane, lewd, lascivious
17 or indecent language, or make any suggestion or proposal of an obscene
18 nature or threaten illegal or immoral act, commits an offence and shall be
19 liable on conviction to a fine of not more than N2,000,000.00 or
20 imprisonment for a term of 3 years or to both.

21 **29.** This Bill may be cited as the Criminal Code Act (Amendment) Short Title
22 Bill, 2016.

EXPLANATORY MEMORANDUM

(This note does not form part of the above Act but is intended to explain its
purport) This Act seeks to amend the Criminal Code Act, Cap. C38, Laws of
the Federation of Nigeria, 2004 in order to provide for offences and penalties
relating to computer misuse and cybercrimes.

