

# A BILL

## FOR

AN ACT TO AMEND THE PENAL CODE (NORTHERN STATES) FEDERAL PROVISIONS ACT, CAP. P3 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 Penal Code (Northern States) Federal Provisions Act,  
2   CAP.P3 LFN, 2004 (herein after called "the Principal Act") is amended as  
3   set out below

4           2. The Principal Act is amended by inserting a new Chapter  
5   XXXVIII as follows;

### 6   COMPUTER MISUSE AND CYBERCRIMES OFFENCES

7           3.-(1)Any person, who without authorization or in excess of  
8   authorization, accesses in whole or in part, a computer system or network,  
9   commits an offence and is liable on conviction to a fine of not more than  
10   N10,000,000:00 or imprisonment for a term of 5 years or to both.

11           (2) Where the offence provided in subsection (1) is committed with  
12   the intent of obtaining computer data, securing access to any program,  
13   commercial or industrial secrets or confidential information, the  
14   punishment shall be a fine of not more than N10,000,000:00 or  
15   imprisonment for a term of 10 years or to both.

16           (3)Any person who, with the intent to commit an offence under this  
17   section, uses any device to avoid detection or otherwise prevent  
18   identification with the act or omission, commits an offence or facilitates the  
19   commission of such offence and is liable on conviction to a fine of not more

1     than N20,000,000:00 or imprisonment for a term of 10 years or to both.

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

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

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

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

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

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

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

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

29            (4) In this section-

1 (a) a reference to doing an act includes a reference to causing an act  
2 to be done;

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

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

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

15 7. -(1) Any person who unlawfully supplies, produces, adapts,  
16 manipulates, procures for use, imports, exports, distributes, offers for sale or  
17 otherwise makes available-

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

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

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

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 Act,  
4 has in his possession any device or program referred to in subsection I of this  
5 section, commits an offence and shall be liable on conviction to a fine of not  
6 more than N10,000,000.00 or imprisonment for a term of 5 years or to both.

7 (3) Any person who, knowingly and without authority, discloses any  
8 password, access code or any other means of gaining access to any program or  
9 data held in any computer or network for any unlawful purpose or gain,  
10 commits an offence and shall be liable on conviction to a fine of not more than  
11 N7,000,000.00 and imprisonment for a term of 5 years or to both.

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

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

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

27 9. -(1) Any person who knowingly and without authority or in excess  
28 of authority causes any loss of property to another by altering, erasing,  
29 inputting or suppressing any data held in any computer, whether or not for the  
30 purpose of conferring any economic benefits whether for himself or another

1 person, commits an offence and shall be liable on conviction to a fine of not  
2 more than N25,000,000.00 or imprisonment for a term of 15 years or to  
3 both;

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

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

12 (a) knowingly obtains or possesses another person or entity's  
13 identity information with the intent to deceive or defraud; or

14 (b) fraudulently impersonates another entity or person, living or  
15 dead, with intent to-

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

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

18 (iii) Cause disadvantage to the entity or person being impersonated  
19 or another person; or

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

24 11.-(1) Any person who intentionally uses any computer or  
25 network system in or for:

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

27 (b) offering or making available child pornography;

28 (c) distributing or transmitting child pornography;

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

30 (e) possessing child pornography in a computer system or on a

1 computer-data storage medium. Commits an offence under this Act and shall  
2 be liable on Conviction:

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

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

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

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

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

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

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

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

20 **12.-(1)** Any person who, intentionally takes or makes use of a name,  
21 business name, trademark, domain name or other word or phrase registered,  
22 owned or in use by any individual, body corporate or belonging to either the  
23 Federal, State or " Local Governments in Northern Nigeria, on the internet" or  
24 any other computer network, without authority or right, or for the purpose of  
25 interfering with their use by the owner, registrant or legitimate prior user,  
26 commits an offence under this Act and shall be liable on conviction to a fine of  
27 not more than N10,000,000.00 imprisonment for a term of 5 years or to both.

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

30 (a) a refusal by the offender to relinquish, upon formal request by the

1       rightful owner of the name, business name, trademark, domain name, or  
2       other word or phrase registered, owned or in use by any individual, body  
3       corporate or belonging to either the Federal, State or Local Government in  
4       Nigeria; or

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

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

14              **13. -(1)** Any person that accesses or causes to be accessed any  
15       computer or computer system or network for purposes of terrorism,  
16       commits an offence and liable on conviction to a fine of not more than  
17       N20,000,000.00 or imprisonment for a term of 10 years or to both.

18              (2) For the purposes of this section, terrorism shall have the same  
19       meaning under subsection (2) of section 1 of the Terrorism (Prevention) Act,  
20       2011.

21              **14.-(1)** Any person who-

22              (a) distributes or otherwise makes available, racist and xenophobic  
23       materials to the public through a computer system or network;

24              (b) threatens persons or group of persons through a computer  
25       system or network, with the commission of a criminal offence for the reason  
26       that they belong to a group, distinguished by race, colour, descent, national,  
27       ethnic origin as well as religion;

28              (c) insults publicly persons or group of persons for the reason that  
29       they belong to a group, distinguished by race, colour, descent, national as  
30       well as religion through a computer system or network;

1 (d) distributes or otherwise makes available, through a computer  
2 system to the public, material which denies, approves or justifies acts  
3 constituting genocide or crimes against humanity, as defined under the Rome  
4 Statutes of the International Criminal Court, 1998.

5 commits an offence and shall be liable on conviction to a fine of not more than  
6 N10,000,000.00 or imprisonment for a term of 5 years or to both.

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

13 15.-(1) A service provider shall keep all traffic data and subscriber  
14 information as may be prescribed by the agency for the time being responsible  
15 for the regulation of communication services in Nigeria.

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

18 (a) preserve, hold or retain any traffic data, subscriber information or  
19 related content; or

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

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

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

29 (5) Anyone exercising any function under this section shall have due  
30 regard to the individual right to privacy under the Constitution of the Federal

1 Republic of Nigeria, 1999 and shall take appropriate measures to safeguard  
2 the confidentiality of the data retained, processed or retrieved for the  
3 purpose of law enforcement.

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

8 16. Where there are reasonable grounds to suspect that the content  
9 of any electronic in communication is reasonably required for the purposes  
10 of a criminal investigation or proceedings, a judge may on the basis of  
11 information on oath:

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

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

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

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

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

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

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

1 used in the commission of the offence.

2 (3) Any service provide who contravenes the provisions of subsection  
3 (1) and (2) of this section, commits an offence and shall be liable on conviction  
4 to a fine of not more than N10,000, 000.00.

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

9 **18.** A body corporate that commits an offence under this Act shall be  
10 liable on conviction to fine of not more than N10,000,000.00 and any person  
11 who at the time of the commission of the offence was a chief executive officer,  
12 director, secretary, manager or other similar officer of the body corporate or  
13 was purporting to act in any such capacity shall be liable on conviction to  
14 imprisonment for a term of 2 years or a fine or not more than N5,000,000.00 or  
15 to both.

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

20 **19.** Any person who-

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

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

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

27 **20.** Any person who with intent to commit an offence under this  
28 section:

29 (1) If he uses electronic mail or communication by means of words or  
30 language threatening to inflict bodily harm to any person or to that person's

1 child, sibling, spouse, or dependant, or physical injury to the property of any  
2 person, or for the purpose of extorting money or other things of value from  
3 any person;

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

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

12 21. Any person who with intent to commit an offence under this  
13 section:

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

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

22 22. This Bill may be cited as the Penal Code (Northern States) Short title  
23 Federal Provisions Act (Amendment) 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 Penal Code (Northern States) Federal Provisions Act, Cap. P3 Laws of the Federation of Nigeria, 2004 in order to provide for offences and penalties relating to computer misuse and cybercrimes.

