Jersey Law 7/1995

COMPUTER MISUSE (JERSEY) LAW 1995
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Jersey Law 7/1995   *Computer Misuse (Jersey) Law 1995*

A LAW to make provision for securing computer material against unauthorized access or modification and for connected purposes, sanctioned by Order of Her Majesty in Council of the

14th day of DECEMBER 1994
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(*Registered on the 17th day of February 1995*)
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STATES OF JERSEY
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The 6th day of September 1994
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THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

ARTICLE 1

Interpretation

(1)   This Article applies for the interpretation of this Law.

(2)   A person secures access to any program or data held in a computer if by causing a computer to perform any function he –

(a)   alters or erases the program or data;

(b)   copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(c)   uses it; or

   (d)   has it output from the computer in which it is held, whether by having it displayed or in any other manner,

and references to access to a program or data and to an intent to secure such access shall be read accordingly.

   (3)   For the purposes of sub-paragraph (c) of paragraph (2) a person uses a program if the function he causes the computer to perform –

   (a)   causes the program to be executed; or

   (b)   is itself a function of the program.

   (4)   For the purposes of sub-paragraph (d) of paragraph (2) –

   (a)   a program is output if the instructions of which it consists are output; and

   (b)   the form in which any such instructions or any other data is output and in particular whether or not it represents a form in which, in the case of instructions, they are capable of being executed or, in the case of data, it is capable of being processed by a computer is immaterial.

   (5)   Access of any kind by any person to any program or data held in a computer is unauthorized if –

   (a)   he is not himself entitled to control access of the kind in question to the program or data; and

   (b)   he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled.

   (6)   References to any program or data held in a computer include references to any program or data held in any removable storage

medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(7)   A modification of the contents of any computer takes place if, by the operation of any function of the computer concerned or any other computer –

(a)   any program or data held in the computer concerned is altered or erased; or

(b)   any program or data is added to its contents;

and any act which contributes towards causing such a modification shall be regarded as causing it.

(8)   A modification referred to in paragraph (7) is unauthorized if –

(a)   the person whose act causes it is not himself entitled to determine whether the modification should be made; and

(b)   he does not have consent to the modification from any person who is so entitled.

(9)   References to a program include references to part of a program.

(10)   Where in this Law there is a reference to an Article by number only, without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

(11)   Where in any Article of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

ARTICLE 2

Unauthorized access to computer material

(1)   A person shall be guilty of an offence under this Article if –

(a)   he causes a computer to perform any function with intent to secure access to any program or data held in any computer;

(b)   the access he intends to secure is unauthorized; and

(c)   he knows at the time when he causes the computer to perform the function that that is the case.

(2)   The intent a person has to have to commit an offence under this Article need not be directed at –

(a)   any particular program or data;

(b)   a program or data of any particular kind; or

(c)   a program or data held in any particular computer.

(3)   A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding six months or to a fine or to both.

ARTICLE 3

Unauthorized access with intent to commit or facilitate commission of further offences

(1)   A person shall be guilty of an offence under this Article if he commits an offence under Article 2 (in this Article referred to as "the unauthorized access offence") with intent –

(a)   to commit any other offence; or

(b)   to facilitate, whether by himself or by any other person the commission of such other offence,

and the offence he intends to commit or facilitate is referred to in this Article as the further offence.

(2)   Proceedings under this Article shall not be instituted without the consent of the Attorney General.

(3)   It is immaterial for the purposes of this Article whether the further offence is to be committed on the same occasion as the unauthorized access offence or on any future occasion.

(4)   A person may be guilty of an offence under this Article even though the facts are such that the commission of the further offence is impossible.

(5)   A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding five years or to a fine or to both.

ARTICLE 4

Unauthorized modification of computer material

(1)   A person shall be guilty of an offence under this Article if –

(a)   he does any act which causes an unauthorized modification of the contents of any computer; and

(b)   at the time when he does the act he has the requisite intent and the requisite knowledge.

(2)   For the purposes of sub-paragraph (b) of paragraph (1) the requisite intent is an intent to cause a modification of the contents of any computer and by so doing –

(a)   to impair the operation of any computer;

(b)   to prevent or hinder access to any program or data held in any computer; or

(c)   to impair the operation of any such program or the reliability of any such data.

(3)   The requisite intent need not be directed at –

(a)   any particular computer;

(b)   any particular program or data or a program or data of any particular kind; or

(c)   any particular modification or a modification of any particular kind.

(4)   For the purposes of sub-paragraph (b) of paragraph (1) the requisite knowledge is knowledge that any modification he intends to cause is unauthorized.

(5)   It is immaterial for the purposes of this Article whether an unauthorized modification or any intended effect of it of a kind referred to in paragraph (2) is, or is intended to be, permanent or merely temporary.

(6)   A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding five years or to a fine or to both.

ARTICLE 5

Territorial scope of offences under this Law

(1)   Except as provided in this Article, it is immaterial for the purposes of any offence under Article 2 or 4 –

(a)   whether any act or other event proof of which is required for conviction of the offence occurred in the Bailiwick; or

     (b)   whether the accused was in the Bailiwick at the time of any such act or event.

     (2)   Subject to paragraph (3), in the case of such an offence at least one significant link with the jurisdiction of the Bailiwick must exist in the circumstances of the case for the offence to be committed.

     (3)   There is no need for any such link to exist for the commission of an offence under Article 2 to be established in proof of an allegation to that effect in proceedings for an offence under Article 3.

     (4)   Subject to Article 9, where –

     (a)   any such link does in fact exist in the case of an offence under Article 2; and

     (b)   commission of that offence is alleged in proceedings for an offence under Article 3,

Article 3 shall apply as if anything the accused intended to do or facilitate in any place outside the Bailiwick which would constitute a further offence under Article 3 if it took place in the Bailiwick were the offence in question.

ARTICLE 6

Significant links with jurisdiction of the Bailiwick

     (1)   This Article applies for the interpretation of Article 5.

     (2)   In relation to an offence under Article 2, either of the following is a significant link with the jurisdiction of the Bailiwick –

     (a)   that the accused was in the Bailiwick at the time when he did the act which caused the computer to perform the function; or

(b)   that any computer containing any program or data to which the accused secured or intended to secure unauthorized access by doing that act was in the Bailiwick at that time.

(3)   In relation to an offence under Article 4, either of the following is a significant link with the jurisdiction of the Bailiwick –

(a)   that the accused was in the Bailiwick at the time when he did the act which caused the unauthorized modification; or

(b)   that the unauthorized modification took place in the Bailiwick.

ARTICLE 7

Territorial scope of inchoate offences related to offences under this Law

(1)   On a charge of conspiracy to commit an offence under this Law –

(a)   the question where any person became a party to the conspiracy; and

(b)   the question whether any act, omission or other event occurred in the Bailiwick,

are questions which are immaterial to the accused's guilt.

(2)   On a charge of attempting to commit an offence under Article 4 –

(a)   the question where the attempt was made; and

(b)   the question whether it had an effect in the Bailiwick,

are questions which are immaterial to the accused's guilt.

(3)   On a charge of incitement to commit an offence under this Law the question where the incitement took place is immaterial to the accused's guilt.

ARTICLE 8

Territorial scope of inchoate offences related to offences under external law corresponding to offences under this Law

Subject to Article 9, if any act done by a person in the Bailiwick would amount to the offence of –

(a)   conspiracy to commit an offence under this Law;

(b)   attempting to commit an offence under Article 4; or

(c)   incitement to commit an offence under this Law,

but for the fact that what he agreed to do, attempted to do or, had in view, as the case may be, would not be an offence triable in the Bailiwick –

(i)   what he agreed to do, attempted to do or, had in view, as the case may be, shall be treated as an offence under this Law for the purposes of any charge of conspiracy, attempt to commit an offence or incitement, as the case may be, brought in respect of that act; and

(ii)   any such charge shall accordingly be triable in the Bailiwick.

ARTICLE 9

Relevance of external law

(1)   A person shall be guilty of an offence triable by virtue of paragraph (4) of Article 5 only if what he intended to do or facilitate would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(2)   A person shall be guilty of an offence triable by virtue of Article 8 only if –

(a)   an act or omission by one or more persons; or

(b)   the happening of some other event,

would constitute an offence under the law in force where the act, omission or other event was intended to take place.

(3)   A person shall be guilty of an offence triable by virtue of –

(a)   paragraph (b) of Article 8 only if what he attempted to do;

(b)   paragraph (c) of Article 8 only if what he had in view, would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.

(4)   Conduct punishable under the law in force in any place is an offence under that law for the purposes of this Article, however it is described in that law.

ARTICLE 10

British citizenship immaterial

(1)   In any proceedings brought in the Bailiwick in respect of an offence to which this Article applies it is immaterial to guilt whether or not the accused was a British citizen at the time of any act, omission or other event proof of which is required for conviction of the offence.

(2)   This Article applies to the following offences –

(a)   an offence under this Law;

(b)   conspiracy to commit an offence under this Law;

(c)   an attempt to commit an offence under Article 4; and

(d)   incitement to commit an offence under this Law.

ARTICLE 11

Conviction of an offence under Article 2 in proceedings for an offence under Article 3 or 4

If on the trial of a person charged with –

(a)   an offence under Article 3; or

(b)   an offence under Article 4 or any attempt to commit such an offence,

the court find him not guilty of the offence charged, it may find him guilty of an offence under Article 2 if on the facts shown he could have been found guilty of that offence in proceedings for that offence.

ARTICLE 12

Search warrants for offences under this Law

(1)   If the Bailiff is satisfied by information on oath that there are reasonable grounds for believing –

(a)   that an offence under this Law has been or is about to be committed in any premises; and

(b)   that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorizing a police officer or other person named therein to enter and search the premises, if need be by force.

(2)   A warrant issued under paragraph (1) –

(a)   shall remain in force for one month; and

(b)   shall not confer any right to production of or access to, items subject to legal professional privilege.

(3)   In executing a warrant issued under this Article a police officer or other person named therein may seize an article if he reasonably believes that it is evidence that an offence under this Law has been or is about to be committed.

(4)   Nothing in this Article shall prejudice any power of search or any power to seize or detain property which is exercisable by a police officer apart from this Article.

(5)   A person who –

(a)   intentionally obstructs a police officer or other person in the exercise of his powers under this Article; or

(b)   conceals from a police officer or other person exercising his powers under this Article, any such articles as are mentioned in paragraph (3),

shall be guilty of an offence.

(6)   A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both.

(7)   In this Article "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft, hydrofoil and hovercraft.

ARTICLE 13

Aiders and abettors, etc

A person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

ARTILCE 14

Short title and commencement, etc

(1)　　This Law may be cited as the Computer Misuse (Jersey) Law 1995 and shall come into force on such day as the States may by Act appoint.

(2)　　An offence is not committed under this Law unless every act or other event proof of which is required for conviction of the offence takes place after this Law comes into force.

C.M. NEWCOMBE

Deputy Greffier of the States.