

COMMITTEE ON HOMELAND SECURITY, JUSTICE
AND PUBLIC SAFETY

BILL NO. 30-0006

Thirtieth Legislature of the Virgin Islands

March 6, 2013

An Act amending Title 14 Virgin Islands Code by creating the “Computer Crimes Act of 2013”

PROPOSED BY: Senator Diane Capehart

1 **WHEREAS**, one of the most important purposes in criminal legislation is deterrence from
2 criminal offenses; and

3 **WHEREAS**, when criminal offense occur, perpetrators must be convicted for the crime
4 explicitly done in order to satisfactorily and efficiently deter the perpetrator, and others from committing
5 or repeating such crimes. These basic premises are also valid for cybercrimes; and

6 **WHEREAS**, in order to establish criminal offense in the Virgin Islands for the protection of
7 information and communication in Cyberspace, laws must be enacted with as much clarity and
8 specificity as possible to avoid reliance on vague interpretations in the existing laws; and

1 to, computer printouts, magnetic storage media, punched cards, or data stored internally in the memory
2 of the computer.

3 (d) "*Computer network*" means a set of related, remotely connected devices and any
4 communications facilities including more than one computer with the capability to transmit data among
5 them through the communications facilities.

6 (e) "*Computer operation*" means arithmetic, logical, monitoring, storage or retrieval
7 functions and any combination of them, and includes, but is not limited to, communication with, storage
8 of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic
9 impulses. A "computer operation" for a particular computer may also be any function for which that
10 computer was generally designed.

11 (f) "*Computer program*" means a series of instructions or statements or related data that, in
12 actual or modified form, is capable of causing a computer or a computer system to perform specified
13 functions in a form acceptable to a computer, which permits the functioning of a computer system in a
14 manner designed to provide appropriate products from the computer systems.

15 (g) "*Computer services*" includes computer time or services, data processing services,
16 internet service providers' networks and facilities located in the Territory or information or data stored in
17 connection with them.

18 (h) "*Computer software*" means a set of computer programs, procedures, and associated
19 documentation concerned with the operation of a computer, computer program or computer network.

20 (i) "*Computer system*" means a set of related, connected or unconnected, computer
21 equipment, devices, and software.

22 (j) "*Data*" means any representation of information, knowledge, facts, concepts, or
23 instructions which are being prepared or have been prepared and are intended to be entered, processed,

1 or stored, are being entered, processed, or stored or have been entered, processed, or stored in a
2 computer, computer system, or computer network.

3 (k) "*Electronic mail service provider*" means any business or organization qualified to do
4 business in the Virgin Islands that provides registered users the ability to send or receive electronic mail
5 through equipment located in this Territory and that is an intermediary in sending or receiving electronic
6 mail.

7 (l) "*Financial instrument*" includes, but is not limited to, any check, draft, warrant, money
8 order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card transaction
9 authorization mechanism, marketable security, or any computerized representation of any of these.

10 (m) "Owner" means an owner or lessee of a computer or a computer network or an owner,
11 lessee, or licensee of computer data, computer programs, or computer software.

12 (n) "*Person*" shall include any individual, partnership, association, corporation or joint
13 venture.

14 (o) "*Property*" includes, but is not limited to:

15 (1) Real property;

16 (2) Computers, cellular devices and computer networks;

17 (3) Financial instruments, computer data, computer programs, computer software and
18 all other personal property regardless of whether they are:

19 (A) Tangible or intangible;

20 (B) In a format readable by humans or by a computer;

21 (C) In transit between computers or within a computer network or between
22 any devices which comprise a computer; or

23 (D) Located on any paper or in any device on which it is stored by a computer
24 or by a human; and

1 (E) Computer services.

2 (p) A person "uses" a computer or computer network when he or she:

3 (1) Attempts to cause or causes a computer or computer network to perform or to stop
4 performing computer operations;

5 (2) Attempts to cause or causes the withholding or denial of the use of a computer,
6 computer network, computer program, computer data or computer software to another user; or

7 (3) Attempts to cause or causes another person to put false information into a
8 computer.

9 (q) A person is "*without authority*" when:

10 (1) he has no right or permission of the owner to use a computer, or, he or she uses a
11 computer in a manner exceeding his or her right or permission; or

12 (2) he or she uses an Internet service e-mail system offered by a U.S. Virgin Islands
13 based Internet service provider in contravention of the authority granted by or in violation of the
14 policies set by the Internet service provider.

15 (3) Transmission of electronic mail from an organization to its members shall not be
16 deemed to be unsolicited bulk electronic mail.

17 (r) "*Services*" includes, but is not limited to, computer time, data processing, and storage
18 functions.

19 (s) "Source document" means an original document or record which forms the basis of every
20 electronic entry put into a computer, computer system, or computer network.

21 **§ 461. *Access to computer for fraudulent purposes***

22 (a) Whoever directly or indirectly accesses or causes to be accessed any computer, computer
23 system, or computer network for the purpose of:

24 (1) devising or executing any scheme or artifice to defraud;

1 (2) obtaining money, property, or services by means of false or fraudulent pretenses,
2 representations, or promises; or

3 (3) damaging, destroying, altering, deleting, or removing any program or data
4 contained in it in connection with any scheme or artifice to defraud, shall be guilty of a felony
5 and shall be subject to the penalties set forth in section 467 of this chapter.

6 **§ 462. *Intentional access, alteration, damage or destruction***

7 (a) Whoever intentionally, without authorization, and for fraudulent or other illegal purposes,
8 directly or indirectly, accesses, alters, damages, or destroys any computer, computer system, computer
9 network, computer software, computer program, or data contained in a computer, computer system,
10 computer program, or computer network shall be guilty of a felony and shall be subject to the penalties
11 set forth in section 467 of this chapter.

12 **§ 463. *Computer theft***

13 (a) Whoever, intentionally and without claim of right, takes, transfers, conceals or retains
14 possession of any computer, computer system, computer network, computer software, computer
15 program, or data contained in a computer, computer system, computer program, or computer network
16 with a value in excess of five hundred dollars (\$500) shall be guilty of a felony and shall be subject to
17 the penalties set forth in Section 467 of this chapter.

18 (b) If the value is five hundred dollars (\$500) or less, the person shall be guilty of a
19 misdemeanor punishable by imprisonment for a term not exceeding one year or by a fine of not more
20 than one thousand dollars (\$1,000), or both.

21 **§ 464. *Computer trespass***

22 (a) It shall be unlawful for any person to use a computer or computer network without
23 authority and with the intent to:

1 (1) Temporarily or permanently remove, halt, or otherwise disable any computer
2 data, computer programs, or computer software from a computer or computer network;

3 (2) Cause a computer to malfunction regardless of how long the malfunction persists;

4 (3) Alter or erase any computer data, computer programs, or computer software;

5 (4) Effect the creation or alteration of a financial instrument or of an electronic
6 transfer of funds;

7 (5) Cause physical injury to the property of another;

8 (6) Make or cause to be made an unauthorized copy, in any form, including, but not
9 limited to, any printed or electronic form of computer data, computer programs, or computer
10 software residing in, communicated by, or produced by a computer or computer network;

11 (7) Forge e-mail header information or other internet routine information for the
12 purpose of sending unsolicited bulk electronic mail through or into the facilities of an electronic
13 mail service provider or its subscribers; or

14 (8) To sell, give or otherwise distribute or possess with the intent to sell, give or
15 distribute software which is designed to facilitate or enable the forgery of electronic mail header
16 information or other internet routing information for the purpose of sending unsolicited bulk
17 electronic mail through or into the facilities of an electronic mail service provider or its
18 subscribers.

19 (b) Nothing in this section shall be construed to interfere with or prohibit terms or conditions
20 in a contract or license related to computers, computer data, computer networks, computer operations,
21 computer programs, computer services, or computer software or to create any liability by reason of
22 terms or conditions adopted by, or technical measures implemented by, a United States Virgin Islands-
23 based electronic mail service provider to prevent the transmission of unsolicited bulk electronic mail in
24 violation of this chapter.

1 **§ 465. *Cyber-stalking and cyber-harassment prohibited***

2 (a) Whoever transmits any communication by computer or other electronic device to any
3 person or causes any person to be contacted for the sole purpose of harassing that person or his or her
4 family is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000),
5 by imprisonment for not more than one year, or both.

6 (b) For the purpose of this section, "harassing" means any knowing and willful course of
7 conduct directed at a specific person which seriously alarms, annoys, or bothers the person, and which
8 serves no legitimate purpose.

9 (c) The course of conduct must be of a kind that would cause a reasonable person to suffer
10 substantial emotional distress, or be in fear of bodily injury.

11 (d) As used in this section, "*course of conduct*" means a pattern of conduct comprised of a
12 series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected
13 activity is not included within the meaning of "course of conduct."

14 (e) A second or subsequent conviction under subsection (a) of this section shall be deemed a
15 felony punishable by imprisonment for not more than two (2) years, by a fine of not more than six
16 thousand dollars (\$6,000), or both.

17 **§ 466. *Violation of restraining order***

18 (a) Whenever there is a restraining order or injunction issued by a court of competent
19 jurisdiction enjoining one person from harassing another person, and the person so enjoined is convicted
20 of the crime as set forth in section 465 for actions against the person protected by the court order or
21 injunction, he or she shall be guilty of a felony which shall be punishable by imprisonment for not more
22 than two (2) years, or by a fine of not more than six thousand dollars (\$6,000), or both.

1 (b) A second or subsequent conviction under subsection (a) of this section shall be
2 punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand
3 dollars (\$10,000), or both.

4 **§ 467. Penalties**

5 (a) Unless otherwise specified, any person who is convicted of an offense which is classified
6 as a felony under this chapter shall be fined not more than five thousand dollars (\$5,000), or imprisoned
7 for not more than five (5) years, or both.

8 (b) Unless otherwise specified, any person who is convicted of an offense which is classified
9 as a misdemeanor under this chapter shall be fined not more than one thousand dollars (\$1,000), or
10 imprisoned for not more than one year, or both.

11 **§ 468. Civil action**

12 (a) Any person injured as a result of a violation of this chapter may bring a civil action
13 against the violator for compensatory damages, punitive damages, court costs, and any other relief that
14 the court deems appropriate, including reasonable attorneys' fees.

15 (b) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured
16 person, other than an electronic mail service provider, may also recover attorney's fees and costs and
17 may elect, in lieu of actual damages, to recover the lesser of five hundred dollars (\$500) for each and
18 every unsolicited bulk electronic mail message transmitted in violation of this chapter up to a maximum
19 of twenty-five thousand dollars (\$25,000) per day. The injured person shall not have a cause of action
20 against the electronic mail service provider which merely transmits the unsolicited bulk electronic mail
21 over its computer network.

22 (c) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured
23 electronic mail service provider may also recover attorneys fees and costs, and may elect, in lieu of
24 actual damages, to recover the greater of five hundred dollars (\$500) for each and every unsolicited bulk

1 electronic mail message transmitted in violation of this chapter up to a maximum of twenty-five
2 thousand dollars (\$25,000) per day.

3 (d) At the request of any party to an action brought pursuant to this section, the court may, in
4 its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the
5 computer, computer network, computer data, computer program and computer software involved in
6 order to prevent possible recurrence of the same or a similar act by another person and to protect any
7 trade secrets of any party.

8 (e) The provisions of this section shall not be construed to limit any person's right to pursue
9 any additional civil remedy otherwise allowed by law.

10 **§ 469. *Use of false information***

11 (a) Whoever intentionally or knowingly makes a transmission of false data for the purpose of
12 submitting a claim for payment, or makes, presents, or uses or causes to be made, presented, or used any
13 data for the purpose of submitting a claim for payment with knowledge of its falsity and with knowledge
14 that it will be used for any claim for payment, shall be guilty of a felony and shall be subject to the
15 penalties set forth in section 467 of this chapter.

16 (b) Whoever intentionally or knowingly: (1) makes a transmission of false data; or (2)
17 makes, presents or uses or causes to be made, presented or used any data for any other purpose with
18 knowledge of its falsity, shall be guilty of a misdemeanor and shall be subject to the penalties set forth in
19 section 467 of this chapter.

20 **§ 470. *Tampering with computer source documents***

21 (a) Whoever intentionally or knowingly conceals, destroys, or alters or intentionally or
22 knowingly causes another to conceal, destroy, or alter any computer source document used for a
23 computer, computer program, computer system, or computer network, when the computer source

1 document is required to be kept by law, shall be guilty of a misdemeanor and shall be subject to the
2 provisions of section 467 of this chapter.

3 (b) Whoever intentionally or knowingly conceals, destroys, or alters or intentionally,
4 knowingly conceals, destroys, or alters or intentionally or knowingly causes another to conceal, destroy,
5 or alter any computer source document used for a computer, computer program, computer system, or
6 computer network, when the computer source document is required to be kept by law, with the intent to
7 obstruct an official investigation by any state agency authorized by law to conduct any civil or criminal
8 investigation, shall be guilty of a felony and shall be subject to the provisions of section 467 of this
9 chapter.

10 **BILL SUMMARY**

11 This bill amends title 14 of the Virgin Islands Code by creating a new Chapter 22 and enacting
12 the “Computer Crimes Act of 2013”.

13 Internal §460 of this bill sets forth the pertinent definitions.

14 Internal §461 of this bill outlines what is considered “*access to computer for fraudulent*
15 *purposes*”.

16 Internal §462 of this bill lays out the intent portion of cybercrimes by defining “*intentional*
17 *access, alteration, damage, or destruction*”.

18 Internal §463 of this bill sets forth the elements of the crime of “*computer theft*”.

19 Internal §464 of this bill sets forth the elements of the crime of “*computer trespass*”.

20 Internal §465 of this bill sets forth the elements of the crimes “*cyber-stalking and cyber-*
21 *harassment*”.

22 Internal §466 of this bill sets forth the penalties for violations of restraining orders.

23 Internal §467 of this bill sets forth the general penalties for violations when not otherwise
24 specified.

1 Internal §468 of this bill allows for individuals to file a civil action based on violations of
2 cybercrime laws.

3 Internal §469 of this bill sets for the elements of the crime of “*use of false information*”.

4 Internal §470 of this bill sets for the elements of the crime of “*tampering with computer source*
5 *documents*”.

6 **BR 13-0068/ February 13, 2013/**

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