

## Tip of the Month November, 2010

### OFFENCES UNDER THE COMPUTER MISUSE ACT, 2003

Did you know that the Computer Misuse Act 2003 (CMA) was passed alongside the Data Protection (Privacy of Personal Information) Act, 2003 (DPA) as part of The Bahamas Government's E-Government Initiative? The other accompanying legislation was the Electronic Communications and Transactions Act, 2003 (ECTA).

Our focus this month is on the CMA and below is a synopsis of the six (6) offences related to the unlawful interference with computers and computer systems. Privacy (data protection) is our concern and the CMA is an important element in this regard.

1. **Unauthorized Access To Computer Material** – This requires a deliberate intention to access information or programs in a computer, with the knowledge that the access is unauthorized.
2. **Access With Intent To Commit Or Facilitate The Commission Of An Offence** – The offence is committed if someone uses a computer to gain access to any other computer for the purpose of committing an offence. In this case the initial access may be authorized, however the purpose for the access may be criminal. It is also irrelevant whether or not commission of the intended offence is possible.
3. **Unauthorized Modification Of Computer Material** – This requires the deliberate alteration of the contents of a computer knowing that such is unauthorized. The offence applies even if the computer affected was not the one targeted.
4. **Unauthorized Use or Interception of Computer Service**- This is the deliberate act of gaining access to a computer knowing that there is no authority for such access, to obtain a computer service whether as computer time, data processing or the storage or retrieval of data. This offence is satisfied either by gaining direct access to the service or by utilizing any device for intercepting communications with the result that a service is obtained through subversion.
5. **Unauthorized Obstruction Of Use Of Computer** – This covers the deliberate act of interfering with the functioning of a computer to prevent access or effectiveness of the operation of the computer, knowing that such interference is unauthorized.
6. **Unauthorized Disclosure Of Access Codes** – This creates an offense where any password, access code, etc. is deliberately released in unauthorized circumstances for the purpose of wrongful gain, illegal activity or knowing that the disclosure is likely to cause wrongful loss to any person.

Enhanced penalties (except for the offence of access with the intent to commit an offence) apply in the case where an offence is committed which involves a protected computer, i.e. those involving security, defense or international relations, law enforcement, communications infrastructure, financial services, public utilities, electronic authentication, emergency, essential services, medical services and public transportation.

The CMA applies to any offense so long as the accused was in The Bahamas at the material time or the computer program, or data was in The Bahamas at the material time.

Where damage is occasioned as a result of any offence the penalties imposed by the courts can be further increased. In addition the courts may order the defendant to compensate the victim for damage to any computer, data or program.

For more information about the CMA and the specific fines imposed under each offence, please refer to a copy of the CMA which is available online @ [www.bahamas.gov.bs](http://www.bahamas.gov.bs)

Protect your privacy. Remember, Privacy is the Best Policy!

Feel free to email us at [dataprotection@bahamas.gov.bs](mailto:dataprotection@bahamas.gov.bs)