

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 CYBER CRIMES AND FOR RELATED MATTERS

Sponsored by Hon. Solomon B. Maren

[] 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, CAP. Amendment of
2 P3 LFN, 2004 (herein after called "the Principal Act") is amended as set out Cap. P3 LFN,
3 below 2004
- 4 2. The Principal Act is amended by inserting a new Chapter Insert new
5 XXXVIII as follows; Chapter XXXVIII
- 6 COMPUTER MISUSE AND CYBER CRIMES OFFENCES
- 7 3.-(1)Any person, who without authorization or in excess of Unlawful access
8 authorization, accesses in whole or in part, a computer system or network to a computer
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 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 and 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; or

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

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

30 (d) In this section "article" includes any program or data held in

1 electronic form.

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

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

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

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

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

26 9.-(1) Any person who knowingly and without authority or in excess
27 of authority causes any loss of property to another by altering, erasing,
28 inputting or suppressing any data held in any computer, whether or not for the
29 purpose of conferring any economic benefits whether for himself or another
30 person, commits an offence and shall be liable on conviction to a fine of not

1 more than N25,000,000:00 or imprisonment for a term of 15 years or to
2 both;

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

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

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

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

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

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

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

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

23 11. -(1) Any person who intentionally uses any computer or
24 network system in or for:

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

26 (b) offering or making available child pornography;

27 (c) distributing or transmitting child pornography;

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

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

1 shall be liable on conviction:

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

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

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

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

10 (b) a person appearing to be a minor engaged in sexually explicit
11 conduct and

12 (c) realistic images representing a minor engaged in sexually explicit
13 conduct.

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

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

19 **12.-(1)** Any person who, intentionally takes or makes use of a name,
20 business name, trademark, domain name or other word or phrase registered,
21 owned or in use by any individual, body corporate or belonging to either the
22 Federal, State or " Local Governments in Northern Nigeria, on the internet" or
23 any other computer network, without authority or right, or for the purpose of
24 interfering with their use by the owner, registrant or legitimate prior user,
25 commits an offence under this Act and shall be liable on conviction to a fine of
26 not more than N10,000,000.00 imprisonment for a term of years or to both.

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

29 (a) a refusal by the offender to relinquish, upon formal request by the
30 rightful owner of the name, business name, trademark, domain name, or other

1 word or phrase registered, owned or in use by any individual, body corporate
2 or belonging to either the Federal, State or Local Government in Nigeria; or

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

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

12 13.-(1) Any person that accesses or causes to be accessed any
13 computer or computer system or network for purposes of terrorism,
14 commits an offence and liable on conviction to a fine of not more than
15 N20,000,000.00 or imprisonment for a term of 10 years or to both.

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

19 14.-(1) Any person who:

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

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

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

29 (d) distributes or otherwise makes available, through a computer
30 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.

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

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

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

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

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

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

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

15 **17.-(1)** It shall be the duty of every service provider in Nigeria to
16 comply with all the provisions of this Act and disclose any information
17 requested by any law enforcement agency or otherwise render assistance
18 however in any inquiry or proceeding under this Act.

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

22 (a) the identification, apprehension and prosecution of offenders;
23 (b) the identification, tracking and tracing of proceeds of any
24 property, equipment or device used in the commission of any offence; or
25 (c) the freezing, removal, erasure or cancellation of the services of
26 the offender which enables the offender to either commit the offence or hide
27 or preserve the proceeds of any offence or any property, equipment or device
28 used in the commission of the offence.

29 (3) Any service provide who contravenes the provisions of
30 subsection (1) and (2) of this section, commits an offence and shall be liable

1 on conviction to a fine of not more than N10,000,000.00.

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

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

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

17 **19.** Any person who:

18 (a) attempts to commit any offence under this Act, or

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

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

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

26 (1) If he uses electronic mail or communication by means of words or
27 language threatening to inflict bodily harm to any person or to that person's
28 child, sibling, spouse, dependant, or physical injury to the property of any
29 person, or for the purpose of extorting money or other things of value from any
30 person;

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

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

9 21. Any person who with intent to commit an offence under this
10 section:

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

14 (2) If he communicates obscene, vulgar, profane, lewd, lascivious
15 or indecent language, or make any suggestion or proposal of an obscene
16 nature or threaten illegal or immoral act.

17 commits an offence and shall be liable on conviction to a fine of not
18 more than N2,000,000.00 or imprisonment for a term of 3 years or to both.

19 22. This Bill may be cited as the Penal Code (Northern States) Citation
20 Federal Provisions Act (Amendment) Bill, 2019.

EXPLANATORY MEMORANDUM

*(This note does not form part of the above Act but is intended to
explain its purport)*

This Bill 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.

