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## DSK Legal Knowledge Center

### Updates on

- Miscellaneous Update

### MISCELLANEOUS UPDATE: INFORMATION TECHNOLOGY

To address various lacunae / shortcomings in the Information Technology Act, 2000 (the "IT Act"), certain amendments were proposed which were approved and passed by the Parliament in December 2008 and have now been notified and thus have come into force with effect from October 27, 2009. The amendment to the IT Act (the "IT Amendment Act") aim to (i) address the obvious shortcomings that were earlier present in the IT Act; and (ii) provide more power to the police and regulators to address and tackle issues arising out of the use of technology.

Some of the key provisions of the IT Amendment Act are as follows:

1. A new definition "communication device" has been introduced thereby broadening the scope of applicability of the IT Act which

earlier only defined computers. Hence, even mobile phones, PDAs and other devices which are used to communicate, send or transmit any text, video, audio or image would fall under the purview of the IT Act.

2. Ironically, though the IT Act sought to regulate the use of computers, till now it didn't define what a computer source code was. The IT Amendment Act protects the "computer source code" in a manner whereby no person shall without the permission of the owner steal, conceal, destroy or alter the computer source code nor shall such person destroy, delete or alter any information residing in a computer resource or diminishes the computer source code's value or utility.
3. Though cyber terrorism is not defined under the Act, through the amendments "cyber terrorism" can be construed to mean

- the action by which any person with an intention to threaten National Security knowingly and/or intentionally penetrates or accesses a computer resource without authorisation or exceeding his/her authorised access, and by means of such conduct obtains access to information/data that is restricted for reasons of National Security or Foreign relations; and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure. Cyber terrorism has been made punishable with life imprisonment.
4. The limit on damages that can be sought by a person in respect of actions defined under Section 43 of the act including damage or unauthorized access / alteration to computer resource has been removed. The powers of the adjudicating officer are enhanced to enable him to adjudicate matters in which the claim for injury or damage does not exceed Rs. 5,00,00,000/- (Rupees Five Crore only) while the jurisdiction to deal with claims for injury or damage exceeding Rs. 5,00,00,000/- (Rupees Five Crore only) shall vest with the competent courts.
5. In addition to the above several provisions have been introduced to tackle cyber crimes such as: (a) (i) dishonestly receiving stolen 'computer resource' or 'communication device' or (ii) identity theft (including fraudulent or dishonest use of signature or electronic signature or password) or (iii) cheating by personation by using 'computer resource' or 'communication device' are each now punishable with imprisonment for a term upto three years or with fine upto Rs. 1,00,000/- (Rupees One Lakh only) or with both; (b) violation of privacy by filming, storing, transmitting of images of private parts of a person is punishable with imprisonment for a term upto 3 (three) years or with fine upto Rs. 2,00,000/- (Rupees Two Lakh only) or with both; (c) child pornography is dealt with severely inasmuch as publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form is now punishable on first conviction with imprisonment upto 5 (five) years and with fine upto Rs. 10,00,000/- (Rupees Ten Lakh only) and in the event of second or subsequent conviction with imprisonment upto 7 (seven) years and also with fine which may extend to Rs. 10,00,000/- (Rupees Ten Lakh only).
6. The amendments propose to form an "Indian Computer Emergency Response Team" a national agency established inter

alia for (a) collection, analysis and decimation of cyber incidents; (b) forecast and alerts of cyber security incidents; (c) emergency measures for handling cyber security incidents; and (d) issue guidelines, advisories vulnerability notes and whitepapers relating to information security practices, procedures, prevention, response and reporting of cyber incidents. A National nodal agency would also be appointed by the Central Government for all measures including research and development relating to protection of critical information infrastructure. Failure to provide any information called for by the Indian Computer Emergency Response Team is punishable with imprisonment for a term which may extend to 1 (one) year and a fine upto Rs. 1,00,000/- (Rupees One Lakh only) or with both.

7. The amendments empower the Indian Government to permit authorities intercept messages from mobile phones, computers and other communication devices, and block websites in the interest of national security.
8. Now, any person not below the rank of an Inspector is vested with the power to investigate any offence and / or enter any public place and search and arrest without a warrant any person

found therein, whose reasonably suspected or having committed or of committing or of being about to commit any offence under the IT Act. These powers were earlier vested with the any person not below the rank of a Deputy Superintendent of Police.

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