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Reg: TBCSA - 2008/011486/08

FINAL VERSION

10 AUGUST 2017

TOURISM BUSINESS COUNCIL OF SOUTH AFRICA's (TBCSA) COMMENTS ON THE CYBERCRIMES AND CYBERSECURITY BILL

1. INTRODUCTION

The Tourism Business Council of South Africa (TBCSA) is an umbrella organization which represents the unified voice of business for the Travel and Tourism (T&T) private sector.

TBCSA is a non-profit, private organization working to unite and influence the diverse Travel and Tourism private sector behind one core mission to contribute to a competitive, responsible and inclusive Travel and Tourism (and South African) economy. Our mandate is to serve the needs to our members who broadly constitutes 20% of the sector's leading business enterprises and whose output represents 80% of the sector's overall economic contribution. These members are in the main, made up of airline associations, bus operators, vehicle rentals, hospitality and accommodation sector, travel agents, professional hunters and tour operators, to name a few. TBCSA serves to provide a VOICE to this community of businesses and to ensure that they play a constructive role in the country's economic development, growth and transformation: and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

The tourism industry is one which contributes significantly to the GDP of this country. According to the World Travel and Tourism Council (WTTC), the industry directly contributed R 127.9 bn or 3.0% total GDP in 2016. It has also contributed 1 533 000 total jobs or 9.8% of total employment in 2016. This includes jobs indirectly supported by the industry. The industry has also seen R 128.3bn in visitor exports generated or 9.9% of total exports in 2016.

The tourism industry is reliant mainly on information technology and internet services in order to get into contact with customers from all over the world, who may want to visit South Africa, as well as those who travel within the Republic. In conducting its business, the tourism industry often falls victim to cybercrimes such as phishing, false bookings through manipulation of computer systems and cyber fraud and cyber forgery. This has led to loss of money in some of the sectors such as the accommodation sector and the car rental sector. It therefore becomes crucial for TBCSA to provide its comment on the proposed legislation on cybercrimes and Cybersecurity to facilitate safety of computer systems in the entire industry.

2. BACKGROUND

The ministry of Justice and Correctional Services has published a Bill on Cybercrimes and Cybersecurity in order to, amongst others:

- Create offences and impose penalties which have a bearing on cybercrime
- Criminalise the distribution of data messages which is harmful and to provide for interim protection orders
- Regulate the powers to investigate cybercrimes and
- Provide for the establishment of structures to promote cybersecurity and capacity building.

Currently, there is no organised approach in South Africa to deal with cybercrime and Cybersecurity, but different government departments have enacted legislations to protect their own interest. The Protection of Personal Information Act (POPI), No 4 of 2013, for instance, seeks to address some of the challenges of cybercrime experienced by the tourism industry. The Cybercrime and Cybersecurity Bill is an attempt by government to come with an organized approach to dealing with cybercrime and fraud.

3. A BUSINESS PERSPECTIVE ON THE CYBERCRIMES AND CYBERSECURITY BILL

3.1 Key Principles

- The primary objective of the Cybercrimes and Cybersecurity Bill is to be able to ameliorate cybercrime and cyber fraud in different industries as well as government entities. This would imply that the South African Police be well equipped to detect cybercrime, effect arrests and ensure that through thorough investigation, conviction of these offences will be brought to book. We believe that convictions with good sentences that fit the crime will serve as a deterrence.
- Crime statistics should be segmented to include broad as well as specific categories of cybercrime and fraud. This should include crimes such as illegal hacking, interception of electronic communication as well as fraudulent emails. This will enable the SAPS to establish the nature and extent of these crimes in order to later develop strategies to deal with them. Because crime statistics is nit reliable in determining the extent of the problem, impact studies as well as surveys with companies could be carried out as an additional source of information, which will enable strategy development.
- Systems to be put in place to deal with cybercrimes and cybersecurity should entail the use of specialised detectives and specialised prosecutors.
- In defining cybercrime in the Memorandum on the objects of the cybercrimes and cybersecurity bill, 2017, it is stated that “an attempted definition of cybercrimes could be crimes which were committed by means of or facilitated by, or involve a computer programme. We are of the view that the word ‘electronic communication systems – including computer programme’ should replace computer programme, so that cellular phones are included.
- The bill needs to deal with issues with awareness of cybercrimes and fraud.
- There is a need for highly trained information technology specialists within government to protect critical networks – and not just state security officials such as the police and state security and defence members.
- Partnership with the private sector is important and should be considered, especially as they are custodians of information on cybercrimes.

- South Africa has not yet ratified or entered into force, the Council of Europe's Convention on Cybercrime, which would serve as a deterrent for international cybercrime. The convention criminalises certain computer actions such as the interception of non-public transmission of computer data and recommends mutual assistance between countries during investigations. Alignment of the bill with this convention is important as it relates to definitions and provisions.

	ITEM	TBCSA SPECIFIC COMMENTS
1.	**Chapter 1: Definitions**	- There is no definition of cybercrimes or cyber fraud. These are later somehow defined in sections 2(1) (2) and section 8 but not explicitly. Examples of cybercrimes could also be offered in a definition that is explicit, such as data espionage, illegal interception, hacking, phishing, system interference, identity theft, website defacement, cybersquatting, etc.
2.	**Chapter 2: Cybercrimes**	- What constitutes cyber extortion also not clear as outlined in clause 10. - Clause 14 (5) sentences should also take into account attorney fees and litigation suffered by businesses; cybersecurity improvements that should be carried out as a result of the offence committed against businesses; the rand value of operational disruption; reputational damage/damage on brand and company name, which may have affected profitability, etc.
3.	**Chapter 3: Malicious Communication**	- Clause 20 refers to electronic communication service providers. Would this perhaps include internet cafes as they are used for the bulk of fraud that takes place in guest houses?
4.	**Chapter 5: Powers to investigate, search, access or seize**	- Clause 43 stipulates that a police officer may search for or seize publicly available data…without any specific authorization. How will this bill deal with police abuse of power in cases where it is used for personal gain?
5.	**Chapter 10: Structures to deal with Cybersecurity**	- Clause 53 - structures to deal with cybersecurity should include the private sector in the form of Business Against Crime as well a South African Banking Risk Information Centre (SABRIC). These entities have information and technology which SAPS may not readily have. - Coordination of intelligence or information on cybersecurity which mat cut across these structures should be coordinated by a body which already coordinates intelligence and actions against cyber-attacks.
6.		-

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4. CONCLUSION

Explicit definitions, which are in line with international conventions and protocols would assist in beefing up this bill so that it deals with cybercrime and fraud committed in other jurisdictions. We are of the view that proper institutional arrangements, without additional costs, would enable government to address the challenge of cybercrime and cyber fraud.

Yours Sincerely

Ms. Mmatšatši Ramawela
CHIEF EXECUTIVE OFFICER
Tourism Business Council of South Africa

TRANSMITTED ELECTRONICALLY, THEREFORE SENT UNSIGNED

ANNEXURE A
List of TBCSA Members

Business Members

Avis Southern Africa Limited
Bidvest
Bon Hotels
City Lodge Group
Expedia
Forever Resorts
Grant Thornton
Fair Trade in Tourism
Industrial Development Corporation
Johannesburg Tourism Agency
Legacy Hotels & Resorts International
Marriot International
Peermont Global Resorts South Africa
Preferred Hotels
South African National Parks
Sun International
South African Express Airways
Siyabona Africa
Stormsriver Adventures
Tsogo Sun Hotels
Thebe Tourism
Thompsons Africa
Tourvest
The Blue Train
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Urban Econ Developments Economists

Association Members

Association for Africa Exhibition Organisers (AAXO)
Association of Southern African Travel Agents (ASATA)
Airlines Association of Southern Africa (AASA)
Afrikaans HandelsInstituut
Board of Airline Representatives of South Africa (BARSA)
Exhibition and Event Association of Southern Africa (EXSA)
Federated Hospitality Association of Southern Africa (FEDHASA)
National Accommodation Association of South Africa
Professional Hunters Association of South Africa (PHASA)
Southern Africa Travel Services Association (SATSA)
Southern African Association for the Conferencing Industry (SAACI)
Southern African Vehicle Rental and Leasing Association(SAVRALA)
Southern African Bus Operators Association (SABOA)
South African Youth Travel Confederation (SAYTC)