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Mr. Speaker,

I wish to begin my presentation by thanking my family for their continued support and guidance which has allowed me to perform my responsibilities.

I would like to thank the people of South East St. Andrew for continuing to repose confidence in me as their elected representative. Councillors Andrew Swaby and Kari Douglas are here as well as member of the executive team of the constituency. I thank them for their support.

My political party, lead by the Opposition Leader, Dr. Peter Phillips and my colleague parliamentarians continue to be a source of support and encouragement.

And finally to our Lord and Saviour, who gives me the strength and courage to take on the challenges of today and tomorrow.

Mr. Speaker, I intend to structure my presentation today, within the framework of the ICT Roadmap which was developed in 2012 and which has four main pillars.

The ICT Road Map: path towards a knowledge based economy

The ICT Roadmap, **started in 2012**, is an **action-oriented portfolio of initiatives**, formulated over three distinct time horizons: 5-years (for long-term objective), 3 years (the medium term) and 18 months (to address short term priorities). Each initiative is situated in one of the following four major pillars:

- 1 • **National ICT Strategy, Policy & Legislation:** Strengthening the ICT governance and administrative framework through the development and promulgation of key pieces of legislation, supporting policy guidelines and regulatory reform.
- 2 • **National ICT Infrastructure:** Continuing to build out Jamaica's National ICT infrastructure to facilitate future broadband deployment and to ensure a competitive sector and digital inclusiveness for all our citizens.
- 3 • **ICT-enabled Public Sector Modernization:** Solidifying the capacity of public institutions and providing the governance framework to deliver efficient and effective public goods and services through the establishment of a more effective Government ICT infrastructure and establishing the institutional capability to architect the overarching technology vision and provide leadership in the development and implementation of the GoJ's ICT strategy and programmes.
- 4 • **ICT Sector Capacity Building/Innovation Enablement:** Utilizing appropriate mechanisms to stimulate new business opportunities, innovation and entrepreneurship in the local ICT sector.

I intend to start by providing a critical analysis of the Data Protection Bill, which is currently before a Joint Select Committee of both Houses of Parliament.

Before going into the specific concerns, I want to make a point on the principle of consultation. I have no doubt that we will have a stronger, better Data Protection Bill which serves the interests of the country because it was subject to a Joint Select Committee of Parliament. There have been almost 30 submissions and presentations made by individuals and groups. We must always trust the wisdom of the people in all that we do.

National ICT Strategy, Policy & Legislation

Strengthening the ICT governance and administrative framework through the development and promulgation of key pieces of legislation, supporting policy guidelines and regulatory reform.

DATA PROTECTION BILL

1. The Data Protection Bill, 2017; is a landmark piece of legislation with far-reaching implications for every facet of our society. Indeed, this Bill is of profound significance not just for industry, commerce and, more generally, the economy; it is also vital for individuals to an extent that borders on being constitutional.
2. The fundamental question regarding the ownership of data – particularly personal data – goes to the very heart of this Bill. That is the crux of the measures enshrined in the Bill because, depending on how this question is answered, we will go in one direction or the other in our assessment as to the propriety – indeed, the *constitutionality* – of the Bill.
3. Another extremely pertinent consideration, particularly in the context of globalisation, is international cooperation. The health – in fact, the very survival of our economy will be dependent on our ability to continue to do business with our international partners. This shines the spotlight on aspects of our foreign policy.
4. In the international arena, the plain reality is that there is inequality of bargaining power. So, despite our sovereignty, there are instances in which more powerful players on the world stage play the tune to which we would be well advised to learn the dance steps.
5. We saw it with FATCA nearly 5 years ago. Our financial sector would simply not have survived if we had tried to resist the edict from the USA in that regard. In this instance, the edict – so to speak – in respect of data protection is coming from the European Union.
6. Mr. Speaker, on Friday of this week (May 25, 2018) **Regulation (EU) 2016/679**, the General Data Protection Regulation, better known as “the GDPR” will come into force for all EU Member States. The significance of this for countries like us

that are not Member States of the EU, i.e. “third countries”, is that we will only be able to continue to have personal data of EU residents transferred to us on the basis of an adequacy decision from the European Commission.

7. To get that adequacy decision, we will have to demonstrate that we offer a level of protection of personal data equivalent to that provided by the GDPR. In essence, then, we have to comply with the GDPR just like we had to comply with FATCA.
8. Technically we can say ‘no’; the EC cannot force us to follow the GDPR any more than the USA could technically have forced us to implement FATCA. But ask yourself what kind of business these days does not necessarily entail the exchange of some amount of personal data. Then ask yourself whether we can really afford not to be able to do business with the EU.
9. Whilst we support this Bill, I must say our support cannot and will never be that of blind and uninformed support. To do that would be dishonour the oath we took as MP’s. The Bill as presented by the Executive has some gaping holes and I will use my time not only to highlight them, but in keeping with our historical mission, we commend to the House, practical and much needed proposals. It is our hope that members on that side of the House, will see the merit in what we are proposing as amendments.

THE WIDE RANGING POWERS OF THE OFFICE OF THE INFORMATION COMMISSIONER

10. The Office of the Information Commissioner is created at Section 4 of the Bill and the applicable functions of the Commissioner are clearly set out in the said section. These functions fall under two broad headings, which are General and Specific. A clear example of a specific function is that the Commissioner can encourage members of trade organisations (example Attorneys, Doctors and Chefs, etc.) to publish voluntary codes of practice for its members. An example of a General function is that the Commissioner has a duty to promote the observance of the Act by all those whose activities are affected by the Act.
11. Those are just two examples of the far reaching responsibilities that the

Commissioner has. We on this side of the House, take the view that with such great responsibility and with the potential to impact on the lives of every Jamaican, the provisions of section 4(4) of the Bill cannot stand. Section 4(4) which is equivalent to the wording of section 5 of the Contractor General Act section 94(6) of the Constitution (ODPP), provides in effect that the Information Commissioner is in effect not answerable to any other institution or person within the Jamaican State.

12. How do we propose to achieve the necessary balance between independence and accountability? Option one, which is the traditional option is to impose a mandatory duty on the Information Commissioner to file annual reports to Parliament, as is required of the Public Defender, Contractor General and other Commissions of Parliament. Of course the Information Commissioner is not a Commission of Parliament but instead the Office is a Body Corporate, a term defined under the Interpretation Act. This does not preclude the imposition of such a duty on the Information Commissioner.
13. That would be a step in the correct direction. I say a step in the right direction, because the submission of an annual report is only part of the mechanism that should be put in place. Accordingly, and having special regard to the fact that the right to privacy is engaged by the Information Commissioner's role, we are of the view that the Bill should create a Permanent Information Committee of Parliament (PICP) which should be conferred with the power to require the appearance by the Information Commissioner at such a Committee, where or if there is an issue arising and associated with the functions of the Information Commissioner, that raises a matter of general public importance. The decision of the Committee to summon the Information Commissioner, can only be exercised by the PICP, after it has given the IC an opportunity to respond in writing to the concerns raised.

FORCING MEDIA PERSONNEL TO REVEAL SOURCES OF DATA

1. Freedom of expression, Mr Speaker, is a fundamental freedom guaranteed by our Constitution.

2. Of particular concern is the provision in the Bill that could force media personnel to reveal sources of data. That provision is clause 6(2)(c)(ii), which gives the data subject a right to have communicated to him or her “any information available to the data controller as to the source of” the individual’s personal data.
3. Mr Speaker, I appreciate that the right under clause 6(2)(c)(ii) is not absolute. It is subject to “the exemptions set out in Part V” and, of course, any request made by the data subject for the source of the data is subject to the Information Commissioner.
4. Further, publication of journalistic material is (by clause 37 and clause 2(1)) one of “the special purposes” which are expressly exempt from a number of provisions (including clause 6). However, this too is subject to a determination by the Commissioner (see clause 52).
5. In effect, then, the ability of journalists to protect their sources and, by extension the integrity and vitality of the Press, are placed by this Bill squarely in the hands of the Information Commissioner.

A MANDATORY 3-YEAR REVIEW OF THE ACT

1. I suggest, Mr. Speaker, that every 3 years there be a full Parliamentary review of the Act resulting from any Bill we ultimately pass on data protection. Such a provision exists in respect of the *Cyber Crimes Act* and given the fast pace at which there are technological developments, there is a need for a built-in review mechanism

TIMEFRAME FOR IMPLEMENTATION

1. Another pertinent consideration is the timeframe for implementing any Bill we ultimately pass on data protection. Frankly, an across-the-board 12 month transitional period fails to take account of the nuances. This particular Bill affects everybody: the big, the small and the in-between. Hopping aboard the train will be far easier for the able-bodied and athletic than it will be for the infant, the

elderly or the infirm. The legislative provisions setting out the implementation timeframe need to reflect that. We are recommending a 24 month period.

National ICT Infrastructure

Continuing to build out Jamaica's National ICT infrastructure to facilitate future broadband deployment and to ensure a competitive sector and digital inclusiveness for all our citizens.

Much of the work being done to expand ICT infrastructure represents a continuation of programs started by the previous Administration plus some new initiatives.

While these programs will increase access to ICT Infrastructure, we believe it is important to ensure that there is a process of public education to ensure proper use of the technology.

In this regard, we are recommending the launch of a Digital Literacy Program.

THE DIGITAL LITERACY IMPERATIVE

Digital technologies nowadays are key drivers of innovation, growth and job creation in the global economy. Digital literacy has therefore become a prerequisite for creativity, innovation and entrepreneurship and without it, citizens can neither participate fully in society nor acquire the skills and knowledge necessary to live in the 21st century.

Although basic literacy rates in Latin America and the Caribbean are higher than the global average, the gap in digital literacy and skills is a significant barrier to Digital Inclusion. Digital Literacy therefore has to become a national imperative if Jamaica and Caribbean societies are to keep pace with global trends and remain competitive in the rapidly evolving Digital Economy.

Defining Digital /Data Literacy

Digital literacy is the knowledge, skills and attitude of individuals to appropriately use digital

tools and facilities to *identify, access, manage, integrate, evaluate, analyse* and *synthesize* digital resources, construct new knowledge, create expressions, communicate with others, in the context of specific life situations, in order to enable constructive action, and to reflect upon this process.

- *Data literacy* is the ability to *collect, manage, evaluate, and apply data*, in a critical manner

Recommended Government Initiatives

- Incorporate Digital Literacy into the mainstream primary and secondary educational curriculum
- Digital Literacy training interventions through Community Access Points
- Awareness programs through Jamaica Information Service
- Providing Corporate Entities with tax credits to undertake broad-based digital literacy training
- Expand USF Mandate beyond expanding Digital / ICT Infrastructure, to broadening the digital literacy framework

ICT-enabled Public Sector Modernization

Solidifying the capacity of public institutions and providing the governance framework to deliver efficient and effective public goods and services through the establishment of a more effective Government ICT infrastructure and establishing the institutional capability to architect the overarching technology vision and provide leadership in the development and implementation of the GoJ's ICT strategy and programmes.

Mr. Speaker, in 2015, our Administration broke new ground by establishing the post of Chief Information Officer for the Government of Jamaica. Since the new Administration took over, there has been instability in the CIO Office and the incumbent is now operating on a part time basis. To fully achieve the goals of public sector modernisation, we need to have the CIO operating on a full time basis.

ICT Sector Capacity Building/Innovation Enablement

Utilizing appropriate mechanisms to stimulate new business opportunities, innovation and entrepreneurship in the local ICT sector.

Mr. Speaker, the area in which this Administration has performed the poorest is in facilitating and stimulating entrepreneurship in the ICT sector.

CLOSE OF START UP JAMAICA A SLAP IN THE FACE TO TECH ENTREPRENEURS

In August 2017, the Government closed down the operations of Start Up Jamaica. The closure represented a sad day for the local ICT industry and a reversal of the efforts made to build an entrepreneurial ecosystem, particularly for tech entrepreneurs.

Start Up Jamaica was in the truest sense a start up and had its own birthing and growing pains. Notwithstanding that, the decision by the Government to close it down is a slap in the face to those young entrepreneurs who were seeking an avenue to turn their ideas into businesses.

UPDATE THE PATENT ACT TO MONETIZE THE APPLICATION OF IDEAS

Patents are an essential tool to monetizing the application of ideas. While we are seeking to develop our scientific activity, we will not realize the economic benefit from it unless we strengthen the mechanisms for examining and issuing patents, and develop the expertise within the legal system to litigate the defense of patents issued. These systems raise confidence in the system and increase the chances of attracting investment.

The legislation governing how patents work in Jamaica date back to about 1854 (over 150 years

old). Although they still nominally provide protection in Jamaica for the exclusive right to exploit intellectual property (IP) in inventions, there are (at least) two major repercussions of the lack of an update:

1. The fees for patent applications and maintenance are specified within the Act. These nominal amounts have not moved with inflation or changes in the value of our currency over all these years. This means that practically, it costs more to send a letter today than it does to file a patent application with JIPO. Patent fees are supposed to support the operations of the patenting process, including paying the fees of patent examiners (a highly specialised job). Clearly, today's fees cannot do this, which means that patent management essentially costs the Government more to administer than it earns. This is one way that any patent activity in Jamaica fails to have any significant macro economic impact.
2. With a few exceptions, patent protection for an invention is limited to the jurisdiction of the country issuing the patent. Also, patent protection must be sought simultaneously. This means that a company seeking patent protection for a potentially valuable invention must choose which markets to pursue patent protection in at the outset. There is currently a treaty called the Patent Cooperation Treaty (PCT) sponsored by the WIPO, which facilitates the process of examining a patent in a way that does not jeopardise its validity in other countries. Under the PCT, a patent can be examined under a kind of one-stop-shop system that reduces the cost of examination and filing in several countries. Jamaica is NOT a signatory to the PCT (but Trinidad is) and as such Jamaican inventors cannot take advantage of this filing system. In fact, in some instances, Jamaicans actually go to Trinidad to file a patent application in order to take advantage of the availability of the PCT system. This sort of practice leads to low measurements of innovation in Jamaica, which makes it more difficult to attract serious investors. The proposed revised bill embraces the PCT system.

APPENDIX

SUCCESSFUL OUTCOMES OF START UP JAMAICA

Jermaine Henry of AgroCentral split off from his team after not achieving their desired traction. He was invited by Devlabs to go to Oakland opportunities to develop a new business. After a few quick pivots Jermaine worked with Sheldon Trotman to develop a product called Finatric (<http://www.finatric.com/>). After a year they generated some traction and got an offer for an undisclosed sum, for which they accepted. The two founders returned to Jamaica after that exit and started Flow Facto (<http://flowfacto.com/>) an invoice factoring service for agro exporters, using the previous proceeds as collateral for the service. Devlabs continues to co-invest with them.

Stephen Williamson of Pandosoft (http://www.jamaicaobserver.com/business/Pandosoft-goes-hard-into-gaming_18608475) split from his team to start CarsConnect Limited (<http://carsconnectja.com/>). He and his cofounder an attorney in the venture use whatsapp to identify buyers and sellers of cars and source the parts all over the world using his knowledge of web based services and software development skills and his short experience in the auto industry when he was seeking to rebuild his savings after the losses in Pandosoft.

Ruchmair Dixon had been working on a software tooling business for Unity – the largest video development platform in the world. His products won a few awards and through Startup- Jamaica he was invited to the go to Taiwan for a soft-landing opportunity for Video game developers. He got featured recently in The Chinapost magazine (<https://chinapost.nownews.com/20171221-176613>) for his business now operating in Taiwan where he employs two developers there.

Mannin Marsh from the Vinelist was offered investment from First Angels for about US\$20,000 subject to due diligence, they decided to turn down the money and use the US\$25,000 Investor Readiness Grant out of LINK Caribbean instead, to

bring their product to market and not give up decision making power to the First Angels. They are set to launch their new product iteration before this summer.

D'Andre Fraser from Billodex has raised his second round of investment from First Angels and employs a team of developers and marketers to bring his product to market. So far he has raised about US\$150,000 through the angel investor network.

StartupRobot has employed Akua Walters to drive business development which has resulted in a portfolio company – Hacker Hostel which recruits engineers internationally and provides the capacity to solve our own problems through technology. StartupRobot now “links good ideas to good money” as its core operation. Hacker Hostel was captured more than US\$100,000 within 6 months of incorporation and a pipeline of US\$504,000 within its first year.

Dwayne Samuels and Shawn Mclean pivoted their start-up Grik.ly to a new company called Samelogic. They now do emotional analytics for customer surveys and one of their clients is GFK the fourth largest consumer analytics company in the world and Samelogic operates between, Silicon Valley and Jamaica.

MediRevu pivoted into Carepoint – a company building tools for better data management for outpatient care. Even though the team hails from Barbados they were a part of the first cohort of Start-up Jamaica and benefitted from the training and network afforded them in the programme. They have a number of clients now as they expand into Jamaica which has a larger customer base of Doctors than they have in Barbados by virtue of population.