

## **FOR YOUR EYES ONLY ..... ?;**

### **REVENGE (NON-CONSENSUAL) PORNOGRAPHY IN JAMAICA,**

### **CRIMINAL OR TORTIOUS?**

***PRESENTATION AT THE 4<sup>TH</sup> IAP CONFERENCE, MONTEGO BAY CONVENTION CENTRE, MONTEGO BAY, ST. JAMES NOVEMBER 2-5, 2016***

### **INTRODUCTION**

Love to hate, lust to distrust, like to dislike, envy, disguise, bitterness, mischief, hostility,  
**LACK OF CONSENT, REVENGE!!!**

It is no secret that our generation is heavily reliant on all things cyber. iPads, smart phones, smart televisions, smart refrigerators, the Internet. So heavily reliant are we, that when it comes on to relationships, whether with our selves or intimate relationships with others, there are numerous acts that we have chosen to document by use of our phones, cameras and other cyber-paraphernalia. Revenge pornography did not arise from this reliance on cyber-paraphernalia and is definitely not a new act. Revenge pornography has existed from the day we were able to document in any way our voyeuristic proclivities. However, with the existence of the internet, smart phones and the like, the result is that the distribution and damage resulting from revenge pornography has grown exponentially.

In the absence of any real framework to police the internet the question has arisen which remains highly debated, of what should be one's recourse when the most private of images or videos of adults are made privy to the world by the use of the computer<sup>1</sup> through the internet or otherwise. What should be one's recourse when a scorned or bitter lover decides to make public by way of the use of a computer what is deemed private? What should be one's recourse when an individual who is just mischievous decides to share with the general public the private voyeuristic proclivities of another without their consent? Can the civil law really be sufficient to handle this? Or is the criminal law overreaching by trying to be applicable to the backlash of failed private relationships? Who is responsible?

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<sup>1</sup> Section 2 (1) of the Cybercrimes Act of Jamaica, 2015 defines a computer as any device or group of interconnected or related devices, one or more of which pursuant to a program performs automatic processing of data and –

(a) Includes any data storage facility or electronic communications system directly connected to or operating in conjunction with such device or group of such interconnected or related devices;

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## **DEFINING REVENGE (NON-CONSENSUAL) PORNOGRAPHY**

Revenge pornography by its nature can take on many forms and to define it has been difficult.

It can range from the classic situation where A takes an intimate picture or video of B with B's consent and when they break-up or the relationship sours, A posts this image or video on the internet without B's consent. Or, the situation where A records a video or takes an image of B without B's consent and during the relationship/dalliance/hook-up (to use internet lingo), A releases this video or image in the cyber-domain without B's consent.

***In simple terms revenge pornography may be seen as the electronic distribution of sexually graphic images or videos of individuals without their consent.***

An alternative definition may be found in the House of Lords Communications Select Committee which defines revenge pornography as “usually following the breakup of a couple, the electronic publication or distribution of sexually explicit material (principally images) of one or both of the couple, the material having originally been provided consensually for private use.”

From this definition it is clear that what is termed as revenge pornography may exist in the absence of revenge and pornography. This is the reason that other persons have preferred the use of the term non-consensual pornography to refer to this type of conduct.

Reference is made to *Mary Franks ‘Drafting an Effective “Revenge Porn” Law: A Guide for Legislators (2015)<sup>2</sup>* where she states that:

***“The term “revenge porn,” though popular, is misleading in two respects. First, perpetrators are not always motivated by vengeance. Some act out of a desire for profit, notoriety, or entertainment, or for no particular reason at all. Perpetrators include not only bitter ex-partners but also people who are complete strangers to their victims (my emphasis added). Second, the term “revenge porn” is sometimes interpreted to mean that taking a picture of oneself naked or engaged in a sexual act (or allowing someone else to take such a picture) is pornographic. Creating explicit images in the expectation within the context of a private, intimate relationship - an increasingly common practice - is not equivalent to creating pornography. However, disclosing a private, sexually explicit image to someone other than the intended audience can be described as pornographic in the sense that it transforms a private image into public sexual entertainment. Many victim advocates accordingly use the term “non-consensual pornography.”***

It is generally the aim of revenge pornography to humiliate and beset the victim by way of public exposure and to destroy the victim's well-being whether mental or physical.

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<sup>2</sup><http://www.cybercivilrights.org/guide-to-legislation/>

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Revenge pornography may also lead to the facilitation of other offences being committed for example, cyber stalking and harassment.

Revenge pornography has very far reaching effects on persons from the destruction of careers to intimidating persons into silence and even driving them to committing suicide. Interestingly, most victims of revenge pornography are women.

### **WHO SHOULD BE RESPONSIBLE?**

In examining revenge/non-consensual pornography in a cyber sphere there are three (3) parties that are usually involved. They are:

1. The Victim
2. The Offender
3. The Information Society Service Providers (ISP)

Another group that is involved is those who it is shared with outside of the initial party and further disseminate it.

Any conversation on who should be liable whether criminally or civilly will require a look at their respective roles. This discussion will not touch on the cases where the victim of revenge pornography is a minor as in Jamaica and other Caribbean territories there are specific laws governing pornography and its distribution where the party is a child.<sup>3</sup>

Where the victim is an adult in Jamaica criminally it becomes somewhat challenging as we have no formal laws on harassment or stalking and an argument can be made that the existing laws do not adequately cover all cases of revenge pornography in the absence of an extortion element or proof of an intent to harass or cause harm, which does not always exist.

### **VICTIM**

The most far-reaching effects of the posting of this material extend to the person (s) who appears in these images or videos. The effects are primarily psychological but can be physical or financial and can be grave.

It is easy to say from the outside looking in that the person(s) should not have taken these images or made these videos in the first place. In my opinion comments like this stem from an ignorance of the impact of these acts on our society and are akin to victim shaming in sexual assault cases.

It cannot be that because one has consented in some cases to a photograph being taken then one should have no complaint or real recourse in the event of the public publishing

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<sup>3</sup> The Child Pornography (Prevention) Act deals with the distribution et al of pornography of children. A child is a person below eighteen (18) years.

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of same without one's knowledge and/or consent. Further there are cases where one does not even know that their privacy has been violated in this way until they become the object of ridicule, harassment and/or shaming; so what should be the response and recourse then?

I have observed that as a country that even though we have started compiling formal data on these instances, this data may mislead us into thinking that this problem is minor<sup>4</sup>. There are a number of reasons for this, chief of which is non-reporting by victims, which may be due to a fear of being ridiculed and further embarrassed or due to the perception that this is a matter for civil court and should not concern us at the criminal bar.

I will admit that a criminal prosecution or civil suit may not adequately assist a victim. The reason for this is that, ultimately their desire is for this to have never happened and further that these images or videos can be erased from cyberspace and be made inaccessible to the general public and our memories. This is akin to what has been termed "a right to be forgotten". However, in most cases even where these images or videos are removed the damage has already been done which no award of damages or any criminal fine or imprisonment can alleviate.

### **OFFENDER (S)**

This can range from the person who the image was first shared with or took the image to third (3<sup>rd</sup>) parties who the image was disseminated to and participated or caused its wider dissemination.

The question that arises is how far should the criminal law go, if anywhere, in making persons criminally responsible.

In my opinion it is clear when the proposed offender is the person who took the image or it was shared with by the victim. It becomes less clear when the person is third (3<sup>rd</sup>), fourth (4<sup>th</sup>) or twentieth (20<sup>th</sup>) in the chain. If person number twenty (20) is the one who posts it to Facebook should that person be just as responsible as person number one (1)? Or because it has already passed through the hands of so many other persons does this negate any criminal responsibility because there is no duty or proximity to the victim?

### **INFORMATION SOCIETY SERVICE PROVIDERS (ISSP'S)**

Websites and other service providers who host this material such as Facebook, Twitter, Instagram are usually exempt from any criminal punishment or civil liability. Generally, for a civil claim to succeed their liability can only be grounded by actual knowledge that tortious or unlawful material has been posted on their website.

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<sup>4</sup> Per the Communication and Forensics Division of the Jamaica Constabulary Force between January and June 2016 there have been sixteen (15) reported cases of this nature. In these instances in the majority of these cases the parties have been referred to civil court as the criminal laws usually do not apply or assist their scenario.

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Recently Facebook was sued by a 14-year-old girl in Northern Ireland over a naked picture of her that was posted on a 'shame page'. The 14 year old is seeking damages for misuse of private information, negligence and a breach of the United Kingdom's Data Protection Act. Facebook sought to quash the lawsuit on the basis that *it is a technology platform, rather than a publisher, and as such is not fully responsible for content shared on its website.* The High Court Judge in Belfast ruled that the lawsuit is to proceed to hearing.

In looking at this case many questions arise, the first of which is, would the High Court Judge's ruling be the same if she were an adult? Further and even more pertinent is, can it be that ISSP's should continue to adopt this passive approach of *"I am not the publisher and so it is not me who has offended,"* in relation to their role in these cases?

It is my opinion that ISSP's need to adopt a more active approach in dealing with the transmission or publication of this data by their engines. It is not enough to say *"we are not the publisher so we should not be responsible"*. It is the passive approach that has facilitated and will continue to facilitate the publication of these images and videos on a large scale. I would agree that for ISSP's criminal sanctions may not be appropriate but if they remain passive it is my position that serious civil repercussions should flow. This view is buttressed by those who feel that the websites which host and propagate these images should be regulated by governments and additionally, specific remedies should be created against them.

Whereas I admit that the involvement of ISSP'S may not eradicate this problem, it is my considered view that an active role in this fight will minimise it. Suggestions that have been made and that have been taken on board by some ISSP's is to one, limit the number of accounts that can be associated with the same IP address and two, collaborate with law enforcement. If we make it more difficult or impossible to host these images or videos that is one big step in protecting victims.

### **EXISTING LEGISLATIVE FRAMEWORK TO TACKLE REVENGE /NON-CONSENSUAL PORNOGRAPHY IN JAMAICA**

As a region it has not been our approach generally to penalize revenge/non-consensual pornography criminally. However, I have observed that in the more recent pieces of Cybercrimes legislation (whether Acts or Bills) ranging from 2013 to present, there have been inserted an offence termed "violation of privacy." Jamaica's Cybercrimes Act, 2015 is an exception as it was felt by legislators that there already existed legislation that could combat this.

In Jamaica, there exists very little by way of legislation to deal with this scourge criminally. Civilly claims can be brought depending on the circumstances for Breach of Confidence, Harassment or Defamation where appropriate. Currently, we have no formal harassment or stalking laws even though the need for legislation to govern these areas has been raised. In addressing this issue I will highlight the relevant pieces of

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legislation that we currently seek to resort to in Jamaica in these situations, to assess whether or not there exists legislation to adequately address this issue.

**1. Section 4 and 9 of the Cybercrimes Act, 2015**

4. – (1) A person commits an offence if that person accesses any program or data held in a computer with the intent to –

(a) commit any offence punishable by imprisonment for a term that exceeds one year; or

(b) facilitate the commission of an offence referred to in paragraph (a) whether by himself or by any other person.

(2) A person may commit an offence under subsection (1) even if the facts are such that the commission of the offence referred to in the subsection (1) (a) is impossible.

(3) For the purposes of this section, it is immaterial whether -----

(a) the access referred to in subsection (1) is with or without authorisation;

(b) the offence referred to in subsection (1) (a) is committed at the same time when the access is secured or at any other time.

(4) A person who commits an offence under subsection (1) is liable upon –

(a) summary conviction before a Resident Magistrate to –

(i) in the case of a first offence, a fine not exceeding four (4) million dollars or imprisonment for a term not exceeding four years:

(ii) if any damage is caused as a result of the commission of the offence, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years;

(iii) in the case of a second or subsequent offence, regardless of whether or not any damage is caused, a fine not exceeding

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five million dollars or imprisonment for a term not exceeding five years;

(b) on conviction on indictment before a Circuit Court to –

- (i) in the case of a first offence, a fine or imprisonment for a term not exceeding seven years;
- (ii) if any damage is caused as a result of the commission of the offence, a fine or imprisonment for a term not exceeding ten years; or
- (iii) in the case of a second or subsequent offence, regardless of whether or not any damage is caused, a fine or imprisonment for a term not exceeding fifteen years.

***Comments: In section 2(2) access is defined and this definition is fairly wide but does not include sending. This section in my opinion would only be useful if one obtained the image or video by accessing the device of a person with a view to use the possession of same to extort them or the like. The offences under the Obscene Publications Act would not apply here as the sentence of imprisonment under that Act is less than a year's imprisonment.***

*Section 9 – Use of Computer for Malicious Communication*

9. – (1) A person commits an offence if that person **uses a computer to send to another person any data** (whether in the form of a message or otherwise)-

- (a) that is obscene, constitutes a threat or is menacing in nature; and
- (b) with the intention to harass any person or cause harm, or the apprehension
- (c) of harm, to any person or property,

.....

(2) An offence is committed under section (1) regardless of whether the actual recipient of the data is or is not the person to whom the offender intended the data to be sent.

(3) A person who commits an offence under subsection (1) is liable upon –

(a) summary conviction before a Resident Magistrate to –

- (i) in the case of a first offence, a fine not exceeding four (4)

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million dollars or imprisonment for a term not exceeding four years:

(ii) if any damage is caused as a result of the commission of the offence, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years;

(iii) in the case of a second or subsequent offence, regardless of whether or not any damage is caused, a fine not exceeding five million dollars or imprisonment for a term not exceeding five years;

(b) on conviction on indictment before a Circuit Court to –

(i) in the case of a first offence, a fine or imprisonment for a term not exceeding ten years;

(ii) if any damage is caused as a result of the commission of the offence, a fine or imprisonment for a term not exceeding fifteen years; or

(iii) in the case of a second or subsequent offence, regardless of whether or not any damage is caused, a fine or imprisonment for a term not exceeding twenty (20) years.

**Comments:**

***Questions that arise in looking at Section 9 are:***

- ***How is “send” to be defined? Should it be given its ordinary dictionary meaning<sup>5</sup>? And if so, is posting to social media sending?***

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<sup>5</sup> In the Oxford Mini Dictionary, Thesaurus and Wordpower Guide, send is defined as “order or cause to go to a particular destination; propel, bring into a specified state.”



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- ***How do you prove intention to cause harm? Is the act of sending without more enough to prove intention?***

## **2. Section 42 A of the Larceny Act**

1) Every person who-

(a) with a view to gain for himself or another; or

(b) with intent to cause loss to another, makes any unwarranted demand with menaces, shall be guilty of the offence of extortion.

(2) For the purposes of this section-

(a) a demand with menaces is unwarranted unless the person making the demand, satisfies the Court that-

(i) he has reasonable grounds for making the demand; and

(ii) the use of the menaces is a proper means of reinforcing the demand;

(b) "gain" and "loss" mean a gain or loss, respectively, in money or other property, including an office or employment, whether or not for remuneration, whether temporary or permanent and, for the purposes of this definition-

(i) "gain" includes a gain by keeping what one has, and a gain by getting what one has not; and

(ii) "loss" includes a loss by not getting what one might get and a loss by parting with what one has; the nature of the act or omission demanded is immaterial and it is also immaterial whether or not the menaces relate to action to be taken by the person making the demand.

(3) A person who commits an offence under subsection (1) shall be liable-

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(a) on conviction before a Resident Magistrate to imprisonment with hard labour for a term not exceeding five years;

(b) on conviction in a Circuit Court to imprisonment for a term not exceeding fifteen years.

**Comments:** *This section speaks for itself and may be only applicable to a case where a demand is made for money or otherwise so as not to disseminate the images or videos.*

### **3. Section 2 of the Obscene Publications Act**

Any person who-

(a) for purposes of or by way of trade or for distribution or public exhibition makes or produces or has in his possession any obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph or any other obscene objects;

(b) .....

shall be guilty of an offence under this Act and shall upon summary conviction before a Resident Magistrate be liable to a penalty not **exceeding forty dollars and in default of payment to be imprisoned for a term not exceeding three months, with or without hard labour.**

**Comments:** *This Act was created in 1927 to target those vendors and or publishers who partook in the possession and distribution of obscene materials. It has not been updated to meet recent challenges, is obsolete and cannot adequately address this issue.*

It is my submission that in examining the relevant criminal legislation there are a number of scenarios that could be classified as revenge/non-consensual pornography that would not be covered adequately if at all.

For example:

1. A takes a video of B with B's consent and shares it with C who is B's best friend by sending it via Whatsapp and C shares it with D and so on. B is just doing this

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to brag on his abilities. There is no evidentiary material to show an intent to harass or cause harm, or is there a presumption that in sending it he intended to cause harm?

2. A records a video or takes an image of B without B's consent and after their escapade while they are still together A releases this video or image in the cyber-domain without B's consent. Is this considered sending? Where is the intent to harass or cause harm? Is a forty dollars fine or 3 months imprisonment sufficient to address this?

### **CONSIDERING THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOM IN MAKING REVENGE (NON-CONSENSUAL) PORNOGRAPHY CRIMINAL.**

In section 13 (3)(c) of the Charter of Fundamental Rights and Freedom, there exists a right of a citizen of Jamaica to freedom of expression. In these cases competing with this right contained in section 13(3)(j)(ii) & (iii) of the said Charter, would be the right of every citizen of Jamaica to respect for and protection of private and family life, and privacy of the home; and protection of privacy of other property and of communication.

I am not saying by criminalising these actions that the right to privacy is greater than ones right to freedom of expression. However it is well established that the right of a citizen may be derogated from where it is demonstrably justified in a democratic society. So it is further my opinion that the existence of a right to freedom of expression of any citizen of Jamaica would not be a good basis on which to argue against the criminalizing of this particular breach of a citizen's right to privacy<sup>6</sup>.

### **CIVIL REMEDIES**

In the civil realm there is no documented case as yet in Jamaica which has addressed a case of revenge/non-consensual pornography. In looking at Jamaica and the region I have identified three possible causes of action that may be brought. They are:

1. Breach of confidence
2. Tort of harassment
3. Defamation

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<sup>6</sup> In the U.S.A. it may appear that the first amendment right to freedom of expression would not apply to the publishing of obscene materials due to *Miller v. California*, [413 U.S. 15](#) (1973) . This was a [landmark](#) decision by the [United States Supreme Court](#) wherein the court redefined its definition of obscenity from that of "utterly without socially redeeming value" to that which lacks "serious literary, artistic, political, or scientific value and said that publishing obscenity is not protected by the first amendment.

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### **Breach of Confidence**

The court exercises an equitable jurisdiction to restrain a breach of confidence independent of any right at law<sup>7</sup>. The Court will grant equitable relief on this basis in three instances where no remedy would normally be available at law. They are:

- I. Where the parties to a confidential disclosure are not in a contractual relationship.
- II. Where a third party receives confidential information from a confidant in breach of the confidant's obligation of confidence, the third party can be restrained from misusing that information.
- III. Persons who acquired confidential information in the absence of a confidential relationship may be restrained by equity.

To obtain this relief a claimant will have to show that:

- i. there is no remedy available at law
- ii. the information must have the necessary quality of confidence, that is, it must not be something which is public property or knowledge
- iii. there must be an obligation of confidence in the circumstances under which the information was imparted.
- iv. there must have been an unauthorised use of that information by the party communicating it to the detriment of the confider.<sup>8</sup>

### **Tort of Harassment**

In looking at the case of *Erica Allen Needham et al v Charmaine Senior HCV 0852/2006* a claim may be brought for the tort of harassment in addition to any other criminal charge. One would have to prove the following:

- a. deliberate conduct,
- b. directed at the claimant,
- c. results in damage which is short of physical harm or a recognised psychiatric illness, for eg. anxiety and distress

In such a claim one may be awarded damages or injunctive relief.

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<sup>7</sup> *Therese Ho v Lendl Simmons CV 2014-01949*, Unreported (Trinidad & Tobago)

<sup>8</sup> *Saltman Engineering Co. Ltd v Campbell Engineering Co. Ltd (1948) 65 RPC 203 & Coco v AN Clarke (Engineers) Ltd [1969] RPC 41*

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## **Defamation**

Under the Defamation Act, 2013 which relates to the tort of defamation<sup>9</sup>, a person has a single cause of action for defamation relating to the publication of defamatory matter about the person<sup>10</sup>. This tort is actionable without proof of special damage.

Of note is that truth is a defence to defamation so this Act may be of limited applicability in these cases.

## **CRIMINAL LEGISLATIVE EFFORTS, GLOBAL AND CARIBBEAN**

“In 2009, the Philippines became the first country to criminalize non-consensual pornography, with a penalty of up to 7 years’ imprisonment. The Australian state of Victoria outlawed non-consensual pornography in 2013. **In 2014, Israel became the first country to classify non-consensual pornography as sexual assault, punishable by up to 5 years imprisonment;** Canada and Japan criminalized the conduct the same year. England and Wales criminalized the conduct in February 2015. New Zealand outlawed the practice in July 2015. Northern Ireland and Scotland followed suit in February 18 and March 2016, respectively. In 2015, Germany’s highest court ruled that an ex-partner must destroy intimate images of his former partner upon request. Brazil is currently considering legislation on the issue. In the United States, only three U.S. states – New Jersey, Alaska, and Texas – had criminal laws that could be directly applied to non-consensual pornography before 2012. Between 2012 and May 2016, 32 states and Washington D.C. passed criminal legislation to address this conduct: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas (to supplement previous law), Utah, Vermont, Virginia, Washington, and Wisconsin, bringing the total number of states with “revenge porn” laws as of August 2016, to 34<sup>11</sup>.”

## **CARIBBEAN**

### **ST. VINCENT AND THE GRENADINES CYBERCRIME ACT, 2016**

#### **Violation of privacy**

14. (1) A person who, intentionally and without lawful excuse or justification—
- (a) captures;

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<sup>9</sup> Section 5 of the Defamation Act, 2013

<sup>10</sup> Sections 8 & 9 of the Defamation Act, 2013

<sup>11</sup> Mary Franks ‘Drafting an Effective “Revenge Porn” Law : A Guide for Legislators (2015)  
<http://www.cybercivilrights.org/guide-to-legislation/>

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(b) stores in, or publishes or transmits through a computer system,  
the image of a private area of another person without his consent where the  
other person has a reasonable expectation that –

- (i) he could disrobe in privacy; or
- (ii) his private area would not be visible to the public, regardless of  
whether he is in a public or private place,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on–

- (a) summary conviction to a fine of one hundred thousand dollars or to  
imprisonment for two years or to both;
- (b) conviction on indictment to a fine of two hundred and fifty thousand  
dollars or to imprisonment for five years or to both.

(3) For the purposes of this section –

“capture” in relation to an image, means to videotape, photograph, film or  
record by any means;

“private area” means the genitals, pubic area, buttocks or breast;

## **TRINIDAD AND TOBAGO’S CYBERCRIME BILL, 2015**

**18.** (1) A person who intentionally and without lawful excuse or justification—

- (a) captures; or
- (b) stores in, or publishes or transmits through a computer system,  
the image of the private area of another person without his consent,  
where the other person has a reasonable expectation that—
  - (c) he could disrobe in privacy; or
  - (d) his private area would not be visible to the public,  
regardless of whether he is in a public or private place,

commits an offence.

(2) A person who commits an offence under subsection (1), is liable—

- (a) on summary conviction to a fine of one million dollars and  
imprisonment for three years; and
- (b) on conviction on indictment to a fine of two million dollars and  
imprisonment for five years.

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(3) For the purposes of this section, “private area means the genitals, pubic area, buttocks or breast.”

### **CHALLENGES TO ESTABLISHING CRIMINAL LEGISLATION IN THIS AREA IN JAMAICA**

I have separated these challenges in two (2) categories contained below.

#### **PUBLIC PERCEPTION**

1. The views in society that this is not really criminal.
2. The view that it is not for legislation to intervene in this way in the private relationships of its citizens.
3. Victim blaming and shaming.

#### **LEGISLATIVE CHALLENGES**

1. The belief that there already exists legislation to combat this issue.
2. The absence of any stalking or harassment laws and as such why would we criminalise something where there is a cyber-element but not criminalise it generally.
3. The absence of any real data on revenge/non consensual pornography cases due to non-reporting to support calls for legislative reform on this matter.
4. The belief that unless there is an extortion or blackmailing element legislators would be overstepping their boundaries and encroaching on the private lives of their citizens.
5. The limitations of the existing law.

#### **CONCLUSION**

In considering revenge/non-consensual pornography in Jamaica the statement rings true that “social media has evolved into a platform for human beings to misbehave without real repercussions in many instances”.

It is my opinion that to effectively tackle this problem our criminal law needs to be amended to address this issue. Coupled with this, society’s perception needs to be focused on the immense damage this causes instead of victim blaming and shaming. Granted we can be more responsible in our sharing of this material but criminal responsibility should extend to the initial party who shares the images and/or videos without the victim’s consent and/or knowledge and may capture third parties. ISSP’s must be held accountable for the material they host and should be called upon to be more active in monitoring their platforms.

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We can find guidance in our friends in St. Vincent and the Grenadines and in Trinidad and Tobago who have taken the brave step to try and regulate this behaviour.

Revenge (non-consensual) pornography should not be pushed aside as the rumblings of those in relationships gone sour. Remember, the internet has no boundaries or borders but what happens online can greatly affect us offline. With that in mind we should embark on this fight early before it balloons into a scourge that cannot be combated.

### **OTHER RESOURCE MATERIALS**

1. *Non-Consensually Shared Pornography and the Need for Reform in Ireland*, Sam Elliott.
2. *Policing the Internet*, Tim Lawson-Cruttenden, *New Law Journal* 164 NLJ pg 8, 18 July 2014.
3. *Report on the Submissions and Recommendations Made to the Joint Select Committee of Parliament Reviewing the Cybercrimes Act, 2010 Jamaica*
4. *Revenge Pornography*, David Cook, *Criminal Law & Justice Weekly* (2015) 179 JPN 152
5. *Safeguarding Ethics, Justice and Ideas, Regulating Revenge Porn*, Jason Haynes, Faculty of Law, The University of the West Indies, Mona
6. *When Naming is Shaming*, Samantha Pegg, *Law Society Gazette*, (2016) LS Gaz, 1 Aug, 10 (2)
7. *Why and How Congress Should Outlaw Revenge Porn*, Daniel Castro & Alan McQuinn, *The Information Technology & Innovation Foundation*, July 2015