

Cyber Crime in a Changing Landscape.

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The Changing Landscape.

Cyber Crime

1. Crimes against data, **computer systems**
2. The use of the **Computer** in the commission of a crime (incidental)
3. **Computer** as a conduit in unlawful business of child pornography, Computer Related Fraud.

The Changing Landscape.- The Computer



Computer and the Law of Evidence

The Changing Landscape. “The Journey of a thousand miles”.

Lord Reid *Myers v DPP* (1965) AC 1001 @ 1019

“The law regarding hearsay evidence is technical, and I would say absurdly technical.”

Computer and the Law of Evidence

- R v Minors, R v Harper (1989) 2 ALL ER 208 COA , Steyn J.

“documentary records of transactions or events are a species of hearsay, which are not admissible unless they come within the scope of a common law or statutory exception to the hearsay rule” .

- R v Spiby (1990) 91 Cr. App. R 186, Taylor LJ – Computer Printouts of telephone conversations produced without human intervention escaped the rigors of section 68 & 69 PACE. (original evidence)

Computer and the Law of Evidence

R v Shepherd (1993) AC 380 House of Lords. Lord Reid

1. All computer generated material must pass test of reliability and therefore section 69 PACE applicable.

QUESTION ?: Whether a party seeking to rely on computer evidence could discharge the burden cast on it by the PACE to establish that at all material times the computer was in good working order without calling an expert?

Answer : AFFIRMATIVE

Computer and the Law of Evidence

Effect of section 31 G / section 68 & 69 Pace : PROVE THAT;

1. Computer was working properly and not subject to any malfunction;
1. Properly programmed;
1. No reasonable cause to believe that the accuracy or validity of the document has been adversely affected by any improper process or procedure or by inadequate safeguards.

Changing Landscape – Jamaica

Suzette McNamee v R, RMCA 18/ 2007, Dukharan JA;

- All subsections of section 31 G must be proved before the material will be admitted;
- The requirements must be proved conjunctively;
- Evidence must be led to prove each aspect of the provision.

Changing Landscape -

- Evidence Amendment Act 2015(section 31 G)

National Water Commission v. VRL Limited et al
(2016) JMCA Civ 19, paragraph 63;

Justice Dennis Morrison JA. P;

“ the new section significantly recasts the original provision by introducing a mechanism for certification of the requirements relating to the operational integrity of the computer which is contained in section 31 G(1)”

Presumption of Reliability

- A certificate will give rise to a presumption, in the absence of evidence to the contrary, that those requirements have been met;
- A certificate need only be prepared by a responsible person in relation to the operation of the computer.

The Changing Landscape – Social Media Explosion



Changing Landscape- Personal Data

- The genesis of criminal law was based on morality, and therefore conduct which offended the moral fabric of society were deemed to be criminal.

Budapest Convention 2001 Title 3 Content Related Offences- Child Pornography

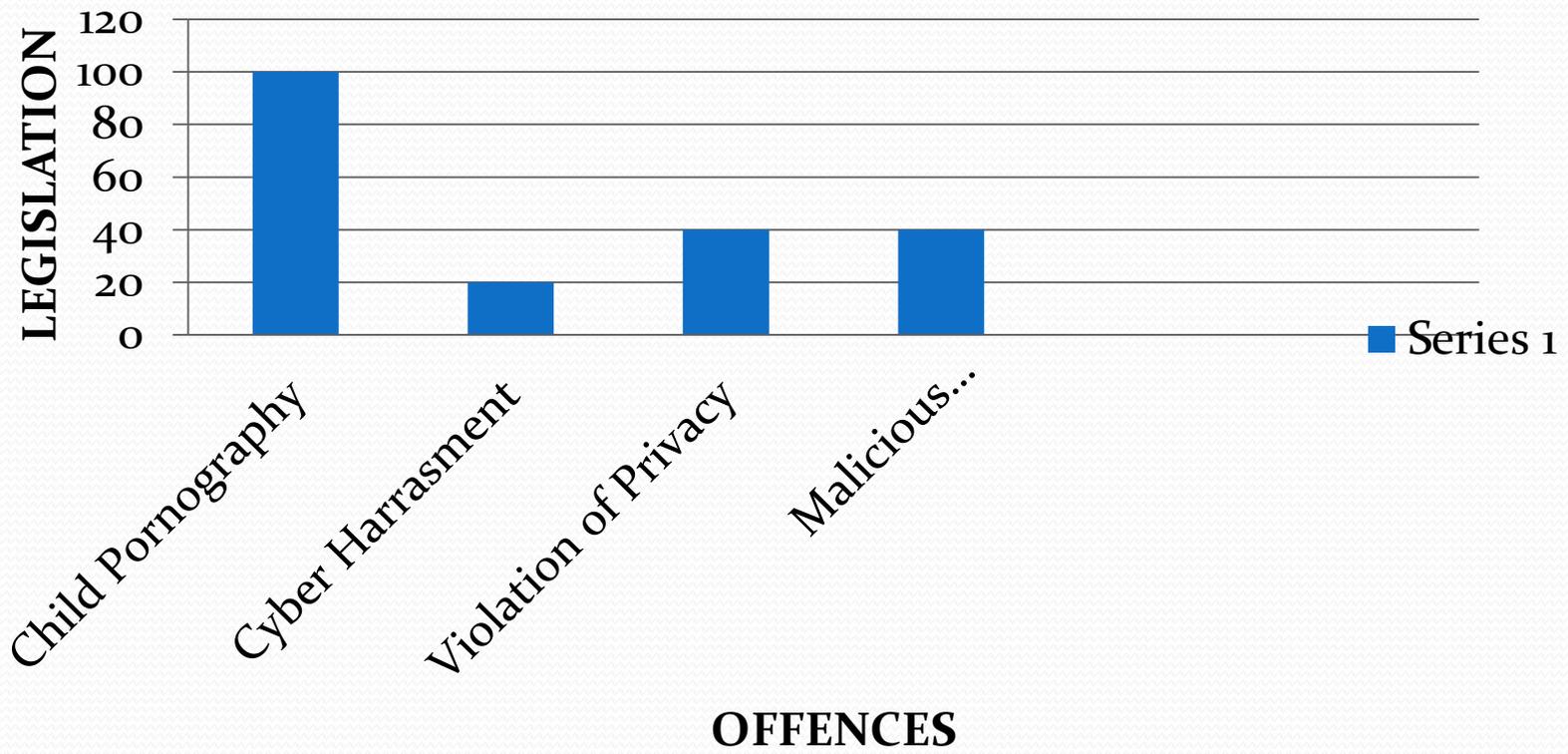
Article 9 – Offences related to Child Pornography

Changing Landscape 2001 - Present

- **Misuse of Personal Images – Violation of Privacy**
- **Threatening messages via Digital Devices**
- **Cyber Harassment**
- **Stalking on the Internet**

Cyber Crime- Legislative Response

- **Jamaica** – Cyber Crime Act 2015
- **Saint Vincent & The Grenadines** – Cyber Crime Act 2016 (Not Yet in Effect)
- **Cayman Islands** – Computer Misuse Law 2000
- **Barbados** – Computer Misuse Act 2005
- **Trinidad & Tobago** – Computer Misuse Act 2000



Cyber Changing Landscape

Use of Live Link & video recorded evidence in the Court Room – Evidence Special Measures Act 2015.



Evidence Special Measures Act 2015

- Wallace and Another v Ramsay and Another (1999) 59 WIR 345, Walker JA referred to the COA in Henderson v SBS Realizations LTD,

“A video link is for all practical purposes, very much the same as hearing the evidence in court. I agree that there are technical problems about it and may be that it is marginally preferable that the evidence should be heard in court.”

In the Matter of Regina vs. Robert Dunbar et al for Money Laundering

- Her Honour Natalie Hart – Hines, paragraph 30,

“ Since the English decision in Henderson in 1992... technology has advanced significantly with the result that the quality of the image and audio of video conferencing is better. Any fears or reservations expressed by the courts in the earlier years regarding possible technical problems must be assuaged by advances in technology....”



Conclusion.