

DIGITAL FORENSICS: PROSECUTING THE CYBERCRIME

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BACKGROUND



- Vision of the Jamaica National Security Policy is “*the establishment of a safe and secure environment for all.*”
- Achievement of this goal meant effectively dealing with some of Jamaica’s greatest threats, one of which is cybercrimes.
- There was little or no provision made in law for activities which targeted computers and computer systems.
- An appropriate legislation was needed which fully addressed the cybercrime issue.
- ***Cybercrimes Act*** implemented on March 17, 2010 as part of this response.

KNOWINGLY OBTAINING UNAUTHORISED ACCESS TO A COMPUTER PROGRAMME OR DATA - SECTION 3 OF THE CYBERCRIMES ACT



Ingredients of the Offence:

- (1) **Actus Reus Requirement** - That the accused accessed a programme or data held in a computer (see ***section 2(2)*** of the Act for what amounts to access);

- (2) That the accused had no authority to access the programme or data held in the computer of the kind in question (see ***section 2(4)*** of the Act for the circumstances in which access is considered unauthorised);

UNAUTHORIZED ACCESS



Mens Rea Requirement - that the accused knew that he did not have such authority to access the programme or data of the kind in question and intended to access the programme or data held in the computer without authorization.

By virtue of **section 3 (2)** it is not necessary for the prosecution to prove that the intention was directed at-

UNAUTHORIZED ACCESS



- (a) Any specifically identifiable programme or data;
- (b) A program or data of any specifically identifiable kind; or
- (c) A programme or data held in any specifically identifiable computer.

KNOWINGLY CAUSING UNAUTHORISED MODIFICATION OF A COMPUTER PROGRAMME OR DATA– SECTION 5 (1)



Ingredients of the Offence:

(1) Actus Reus Requirement – The accused did an act (or acts) which caused the modification of the contents of a computer (see **s. 2 (6)** for what amounts to the modification of the contents of a computer for the purposes of the Act). **Note that if the act done contributes toward causing the modification then it shall be regarded as causing it.**

UNAUTHORISED MODIFICATION



The act done need not be directed at-

- (a) Any specifically identifiable programme or data;
- (b) A program or data of any specifically identifiable kind; or
- (c) A programme or data held in any specifically identifiable computer.

UNAUTHORISED MODIFICATION



- That the accused had no authority to modify the contents of the computer (see **s. 2 (4)** for the circumstances in which a person is considered to be acting without authorization and **s. 2 (6)** for when modification is specifically considered unauthorised).
- **Mens Rea Requirement** - that the accused knew that his actions were likely to cause unauthorised modification.

UNAUTHORIZED MODIFICATION

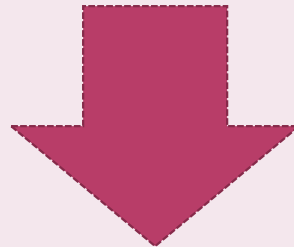


- It is immaterial whether the accused intended that the modification be temporary or permanent (see *section 5 (2)*).

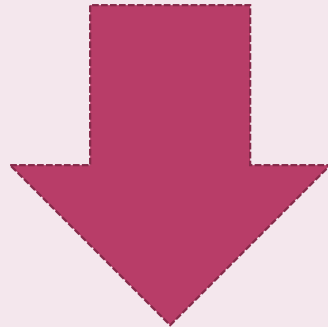
IDENTIFYING THE OFFENDER



The Cybercrimes Act



Section 18



Jurisdiction

JURISDICTION



Wholly or partly in Jamaica

Wholly or partly on board a
Jamaican ship or Jamaican
aircraft

Wholly outside of Jamaica
and attributable to a
Jamaican national or

Wholly outside of Jamaica,
if the conduct affects a
computer or data -

(i) Wholly or partly in
Jamaica; or
(ii) Wholly or partly on
board a Jamaican ship or
Jamaican aircraft.

JURISDICTION – EXTRADITION REQUESTS



Requirements for making an Extradition Request:

- (i) Designated foreign State (existence of a treaty between Jamaica and the particular territory/Commonwealth State);
- (ii) Dual criminality (similarity of elements in the offences within the particular jurisdiction);
- (iii) Offence should not be within the category of a non-extraditable offence within the Extradition Act.

JURISDICTION – MLAT REQUESTS



Section 4 and Schedule of the **Mutual Assistance (Criminal Matters) Act** – Requests by Jamaica:

- 1) Requests can be made to treaty states and designated Commonwealth states;
- 2) Requests can only be made on behalf of the criminal law enforcement authorities in Jamaica;
- 3) The request can be made in respect of investigations and proceedings in any criminal matter.

JURISDICTION – MLAT REQUESTS



Assistance that can be requested – *Sections 5 -14* of the Act

Examples:

- Service of summons on persons to appear in Jamaica;
- Facilitating the appearance of witnesses in Jamaica;
- Asking the central authority to obtain and execute search warrants;
- Identification and location of persons (suspects or witnesses) and objects;
- Interviewing and recording statements from witnesses.

INVESTIGATIVE TOOLS ASSIST THE PROSECUTION



- *Sections 13 – 17 of the Cybercrimes Act* address the investigative tools that are available to aid in the prosecution of offences committed under the Act.

Main Investigative Tools:

- (1) Preservation Orders – *section 14 (1)*
- (2) Search and seizure warrants – *section 15*
- (3) Production Orders – *section 17*

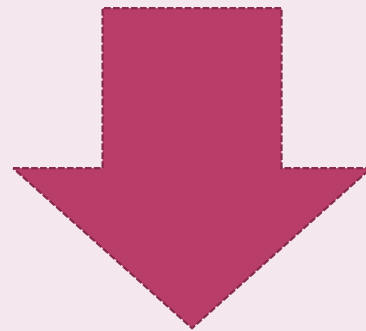
Ancillary Orders are also available under *section 17(4) - 17(18)*

DAMAGE

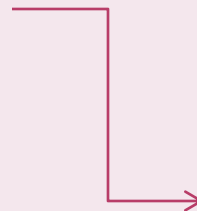


COMPENSATION

SECTION 12



CONVICTION



**ORDER BY COURT
FOR PAYMENT OF
FIXED SUM TO
VICTIM**

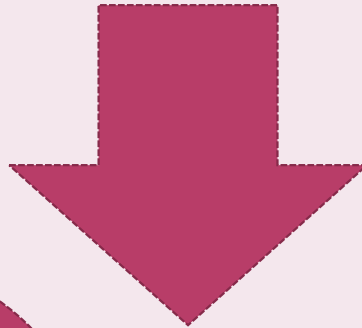
CIVIL SUIT



DEFAMATION



SECTION 12



ORDER FOR PAYMENT OF
DAMAGES/COMPENSATION



NOT A BAR TO ANY
OTHER REMEDY UNDER
ANY OTHER LAW

QUESTIONS

