



112A Edward Street, Port of Spain,  
Trinidad and Tobago

Website: <https://www.ttcs.tt/> ; Email: [info@ttcs.tt](mailto:info@ttcs.tt)

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The Joint Select Committee on the Cybercrime Bill, 2017

The Trinidad and Tobago Computer Society (TTCS) is responding to the Followup request for Additional Information from the Joint Select Committee appointed to consider and report on the Cybercrime Bill 2017 arising from the [TTCS comments](#) presented at the [Sixth Meeting of the Joint Select Committee of the Cybercrime Bill, 2017](#) on Thursday May 17, 2018. Please find our comments related to clause 18 and clause 8 below.

We again thank the JSC for your feedback on Thursday May 17 2018. We welcome any feedback or questions. Please do not hesitate to contact us at [info@ttcs.tt](mailto:info@ttcs.tt).

Thank you again for the opportunity to contribute to the Cybercrime Bill.

Yours Faithfully,

Dev Anand Teelucksingh

Secretary, Trinidad and Tobago Computer Society at <http://ttcs.tt/>

Email: [info@ttcs.tt](mailto:info@ttcs.tt)

## Clause 18 – Cyberbullying

Definitions of Cyberbullying:

Cyberbullying is an accepted term, however, most people still understand different things when we say cyberbullying. To this end, Aftab (2017) suggested that in research, one should not use the term “cyberbullying”, but rather have research subjects choose the actions that have been defined as constituting cyberbullying.

Some definitions follow:

*Cyberbullying* is the use of technology to harass, threaten, embarrass, or target another person. By definition, it occurs among young people. When an adult is involved, it may meet the definition of cyber-harassment or cyberstalking. (“Cyberbullying,” 2014)

WiredSafety defines “cyber-harassment” as digital-sourced attacks by adults or minors against adults, and “cyberbullying” as digital-sourced attacks by minors against minors.(Aftab, 2017)

Cyberbullying is willful and repeated harm inflicted through computers, cell phones, and other electronic devices. (Hinduja & Patchin, 2011)

Traditional offline bullying generally requires a pattern of behaviour. A single incident is not considered bullying in the offline world. However, cyberbullying is somewhat different. A single post can be shared many times, thus the cyberbullying action is done time and time again, every time that the post is shared. Additionally, the audience for the cyberbullying action is potentially infinite, both in time and space, multiplying the humiliation of the victim.

## **Cyberharassment and Young People (Cyberbullying)**

We all “know” what bullying is. We agree with Theresa May (Buchan, 2018) that what is illegal offline (bullying and stalking) is illegal online. However, most young people do not “know” what constitutes cyberbullying. Thus, they aren’t clear on when their behaviour crosses the line, nor are they sure when they are being bullied. (Aftab, 2017)

Additionally, the link between offline and online bullying needs to be considered. The victim of offline bullying may take to cyberbullying as a method of defense against the “schoolyard bully”. How would the bill treat with this sort of action?

The Cybercrime Bill needs to consider the mindset of children when considering cyberbullying. The law should be partnered with a nation-wide education drive, to ensure that teachers, students, and parents all know what cyberbullying is, the signs that indicate that someone is cyberbullying or being cyberbullied, and proper actions to take to stop the bullying.

### **Cyberstalking**

The Cybercrime bill conflates Cyberbullying (focused on children) and Cyberstalking (focused on adults). This is a difficult distinction to make, as there are many cases in which ages are mixed, such as adults re-sharing or directly cyberbullying young people, or the converse, such as children cyberbullying teachers. Given that the Clause cites age as a factor for the Court to consider in any case before it, it is possible that the conflation might be acceptable.

## **Using Offline legislation to deal with Online actions**

There have been multiple suggestions from our members that current legislation that deals with harassment, offences against the person, and civil remedies for defamation can be used to deal with Cyberbullying and Cyberstalking. Unfortunately, the penalties for offline bullying, harassment and

stalking are trivial. The offline legislation needs to be updated as well. The use of current legislation could be considered, as long as the differences between the cybercrime and the offline crime are properly considered.

“Teens can now use technology to expand the reach and extent of their harm in a way that previous generations couldn’t.”(Hinduja & Patchin, 2011)

Bullying is one of the most difficult areas of violence against children to eliminate, especially with the ubiquitous role that internet and mobile technology plays in their life today and the capacity this gives for bullying to continue night and day. (Richardson, Milovidov, & Blamire, 2017)

The main differences between cyber and offline bullying actions are:

Permanence – Once something is on the Internet, it remains there, forever. Once the material has spread, anyone who has downloaded it can re-upload at any time. Internet Archives record pages on particular dates, and keep them. Joy Reid can certainly testify to that, as her blog posts from over 10 years ago resurfaced, causing her serious difficulty.(Victor, 2018)

Reach – Traditional bullying occurs in front of a small audience. Cyberbullying occurs in front of a potential audience of millions. The potential for a large number of people to witness the humiliation of the cyberbullying victim adds to the harm and trauma.

24-7 Bullying – In traditional bullying, the victim generally has a safe harbour where they are safe from the bullying. That may be their own home or room, the home of a friend, or family member, among other locations. Unfortunately, cyberbullying is pervasive and non-stop. There is no time off from being cyberbullied. The bully can post at any time, any day. These posts can be shared by others 24-7. (Kowalski, Limber, & Agatston, 2008)

Online Toxic Disinhibition - While online, some people self-disclose or act out more frequently or intensely than they would in person. Suler (2004) discussed this online toxic disinhibition effect. Factors noted include

- Dissociative anonymity
- Invisibility
- Asynchronicity
- Solipsistic Introjection
- Dissociative Imagination
- Minimisation of Status and Authority

Some of these factors indicate that even in cases where the person’s identity is intact, (non-anonymous) the ability of the online user to be unheard and unseen acts as a powerful factor in allowing people the perceived freedom to visit places online, make comments and act out in ways that they otherwise would not. This negates the popular political idea that “Digital IDs” will prevent such online behavior.(Buchan, 2018)

These differences between cyberbullying and traditional offline bullying indicate that cyberbullying is more widespread and devastating to the victim.

One other point to be considered with respect to a cyberbullying, cyberstalking, or cyberharassment victim using civil remedies to gain redress is the consideration of the effect of non-stop, 24/7, ulying behavior on a victim. Cyberbullying attacks the agency and identity of the victim. It traumatizes them. It is unrealistic and even cruel to expect a person who has been humiliated and abused online to have the power to get up, find funds, hire legal representation, and file a civil suit. This also expects that the victim has collected evidence of the crime and knows the perpetrator of the crime.

## Public Figure Exception

The concept of a public figure should change the level of activity that constitutes “causing harm”. Public figures should, and do, expect a certain amount of comment on their public activities. This is not the case for private citizens. The bar for “harm” should be set much higher for public figures.

A “public figure” needs to be defined for the purposes of this law. We can consider the definitions from the following:

TATT Broadcasting Code: “Public figure” means a public official or other person who is pervasively involved in public affairs. (TATT, 2014)

“A public figure is a person of great public interest or fame, such as a politician, celebrity, or sports hero.” (Temchenko, 2016)

We also need to consider other kinds of public figures. Caruso (2016) also noted that persons may become public figures in other ways. For example a “limited-purpose public figure” is a person who has thrust him or herself into the spotlight for a specific reason, such as addressing a controversy. Would that person be considered a general public figure or simply a person of public interest with respect to that particular issue?

What about “involuntary public figures”? These individuals did not voluntarily assume the risk of injury that comes with being in the spotlight, but are in public view for one reason or another. For example, the victim of, or witness to, a crime can be thrust into the public arena simply by virtue of being connected to a legal matter. Should these people be held to the same standard as public figures who have voluntarily put themselves into the public realm? We can consider the example of a woman who suffered domestic violence for over 30 years. When she left her abusive husband for a week, and made up a story to tell her husband to excuse her absence, her husband reported her missing to the authorities, the story came out in the media, and she was the subject of many cruel social media memes and jokes. These might be considered all well and good for a politician, but for a private citizen, is this not cyberbullying? Was harm not caused to her by the public humiliation?

Public figure status is often determined on a case-by-case basis. (Caruso, 2016)

International experience suggests that laws which aim to protect public people against vaguely defined forms of emotional distress can be abused, for example, by politicians to suppress legitimate criticism - notwithstanding the “thick skins” of politicians under the Westminster model.

## How do we know when legitimate free speech crosses the line?

The right to free speech is one that is enshrined in our Constitution, as well as in International Treaties and Codes. However, the US Court system has ruled that the right of a citizen to free speech is not absolute. (United States Courts, n.d.) For example, freedom of speech does not include the right:

- To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”).
- *Schenck v. United States*, 249 U.S. 47 (1919).
- To make or distribute obscene materials.
- *Roth v. United States*, 354 U.S. 476 (1957).
- To burn draft cards as an anti-war protest.
- *United States v. O’Brien*, 391 U.S. 367 (1968).
- To permit students to print articles in a school newspaper over the objections of the school administration.
- *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
- Of students to make an obscene speech at a school-sponsored event.
- *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986).
- Of students to advocate illegal drug use at a school-sponsored event.
- *Morse v. Frederick*, \_\_ U.S. \_\_ (2007).

It is clear that the right to freedom of speech, at least in the United States, is constrained by where you are, what you say, and how you say it. The rights of the many may outweigh the individual right to free speech. With regard to bullying, many US States have implemented Anti-Cyberbullying statutes. Many of these have been tested in Court. (Hudson Jr, 2016) In general, Courts have struck down or limited those statutes that they consider to be overly broad, or those that do not require that harm to the victim be shown.

“Eventually, the U.S. Supreme Court will have to address the constitutionality of a criminal cyberbullying law,” he says. “The bottom line is that we need to sort this out. There are certain things that people shouldn’t be able to say online. There definitely is a line somewhere, but the courts haven’t really defined where that line is.” (Hudson Jr, 2016)

We are attempting to define where the line lies with regard to the CyberCrime Bill (2017). We have noted in the previous section that public figures should not have the same protections as private citizens, especially children.

However, in Trinidad and Tobago, we have a culture of “picong”. Our jokes, memes, and satire often come extremely close to the line of causing actual emotional harm to the victims of such, and sometimes cross the line.

Robert F. Darden, Professor at Baylor University, wrote (2015):

*The use of printed (and now digital) satire is an old and honorable response to the excesses of government and religion. When the people have no other voice, when the main media outlets are controlled by the state (or too fearful to challenge the state), satire flourishes. One of the few ways the citizen can hold the rich and powerful accountable is to employ humor and satire.*

However, he continued on to say:

*Satire-writers always point out the foibles and fables of those higher up the food chain. Your targets must be the proud and the powerful. If you make fun of people less fortunate than you, even if it is for legitimate satiric effect, then it is not satire. It is bullying. Being a bully is never funny.*

*Satire, like folk music and freedom songs, works best when it is comforting the afflicted and afflicting the comfortable.*

Gar Smith ( 2015) wrote “*Satire, as a form of mockery, reads entirely differently depending on where and how it is directed. Ridicule directed against the powerful—whether the target be a wealthy member of the elite or a multinational corporation—is most easily recognized as the proper use of the satiric tool. However, ridicule directed against the powerless, the disenfranchised, or the disabled can be seen as inappropriate and coldhearted bullying.*”

The ACLU of Virginia has discussed how to balance the right to free speech and the requirement to prevent cyberbullying. (Glenberg, 2013).

From the research cited above, we can identify factors that can assist in determining whether the line between free speech and bullying has been crossed:

Intent – This is a difficult factor to evaluate, but if there is clear intent to cause harm to a person by posting a “joke” or “satirical” comment about them, that should indicate cyberbullying.

Power levels – As Darden and Smith wrote, satire that focuses on the poor and powerless is not satire, but bullying.

Harm – Cyberbullying causes harm to its victims. Cyberbullying can cause serious emotional harm and trauma (as opposed to mere annoyance), physical harm (from doxxing to suicide and self-harm), and reputational harm.

Conduct – In order to not risk a statute that is overly broad and infringes on the right to free speech, the CONDUCT that is defined as cyberbullying should be clearly and precisely listed. There are researchers who have developed lists of cyberbullying conduct. (Aftab, 2017) These can assist in narrowing the definition of the conduct that is prohibited.

## **Clause 8 - Definition of Media/Journalist**

In seeking a definition for the role of journalist, the committee might be better served directing its attention to what demarcates a work of journalism.

The role of traditional media is both in flux and being aggressively questioned in practice by users enabled by pervasive communication platforms.

In seeking to control this explosion of opinion, reporting and, in some cases, propaganda, exploitation and abuse done under the guise of commentary, it would, in the long term, be more valuable and sustainable to address the work done.

The [American Press Institute](#) is only one of many institutions which has grappled with such definitions and their expansive work on the subject will prove useful in setting benchmarks for

evaluating works of journalism, regardless of their source. Kovach and Rosenstiel (2007) identified the essential principles and practices of journalism.

We suggest as a starting point, the following considerations...

Is the work balanced? Does it offer perspectives that represent all meaningful aspects of the issue being aired?

Is the work fair and properly supported by demonstrable fact or reasonable supposition and analysis?

Is publication/broadcast in the public interest? Is the public's understanding of the issues raised or facts revealed improved and clarified by it becoming public?

Is what is being reported or revealed harmful or illegal? Information gained through nonstandard means which saves lives, increases the public good or uncovers criminality or unnecessary waste of public resources or money may outweigh the concerns about how it was revealed.

These parameters return to the central concern about the wording of the bill, the absence of wording, definition and clarification of the public interest involved in the pursuit of aggressive, investigative and valuable journalism which educates, clarifies and informs the public at large.

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Appendix 1 - Cyberbullying Conduct and Actions (from [http://www.stopcyberbullying.org/kids/are\\_you\\_a\\_cyberbully.html](http://www.stopcyberbullying.org/kids/are_you_a_cyberbully.html))

### **Are you a cyberbully?**

Often, people who are victims are also bullies. Before you feel too bad for yourself, take the quiz below to find if you, too, are part of the cyberbullying problem! Rate yourself on the following point scale according to if, and how many times, you have done the below activities. Give yourself 0 points if you've never done it, 1 point if you have done it 1 or 2 times, 2 points if you have done it 3-5 times, 3 points if you have done it more than 5 times.

### **Have you ever...**

- Signed on with someone else's screen name to gather info?
- Sent an e-mail or online greeting card from someone's account?
- Impersonated someone over IM or online?
- Teased or frightened someone over IM?
- Not told someone who you really are online, telling them to "guess"?
- Forwarded a private IM conversation or e-mail without the permission of the other person?
- Changed your profile or away message designed to embarrass or frighten someone?
- Posted pictures or information about someone on a Web site without their consent?
- Created an Internet poll, either over IM or on a Web site, about someone without their consent?
- Used information found online to follow, tease, embarrass or harass someone in person?
- Sent rude or scary things to someone, even if you were just joking?
- Used bad language online?
- Signed someone else up for something online without their permission?
- Used an IM or e-mail address that looked like someone else's?
- Used someone else's password for any reason without their permission?
- Hacked into someone else's computer or sent a virus or Trojan horse to them?
- Insulted someone in an interactive game room?
- Posted rude things or lies about someone online?
- Voted at an online bashing poll or posted to a guestbook saying rude or mean things?



