



Policy Brief

Image Rights in Jamaica

As it stands, there exist no “image rights” in Jamaica. This means that there is no piece of legislation giving individuals standing to bring actions against other individuals or entities for using their images without their consent or approval. However, individuals have avenues to seek courses of action under other areas of law under very specific circumstances. Additionally, if and when the Data Protection Act is actually passed, it will have implications to the effect of giving individuals rights over the use of their images.

Protection of Image Rights in Jamaica

Common Law

Protection of image rights in Jamaica only subsists under alternate offences and in most cases would only cover well-known 'celebrities' who have 'good will' attached to their names, images and reputations or individuals with whom there was a promise of confidentiality.

Passing Off

Requires the subject to have significant good will to their name and reputation. Does not give persons without celebrity to make claims. Passing Off makes it an offense to use the image/name/likeness of another in promoting/marketing goods or services in such a way that would lead persons to believe that that person was associated with the goods or business being sold. (See *Dino Michelle v Bob Marley*.)

Defamation

Defamation laws give some protection but do not apply to purely commercial use that cannot be described as derogatory.

Breach of Confidence

Breach of confidence actions only protect images obtained in situations where confidentiality would be expected.

Data Protection Bill

Under the Data Protection Bill, photographs are captured in the definitions of “biometric data”, “Personal Data” and “Sensitive Personal Data”. Consent to use such data is required and can be given orally or in writing and includes expressions of consent given by the individual, their legal representative of the data subject, any person they have given that power to and in the case of minors, the legal guardian or parent. Civil society organizations who record, store and disseminate such data are regarded as processing, and those organizations are considered data controllers. Such organizations are also responsible for how persons, external to them, use the images of individuals on their behalf. The Act requires that organizations employ a data protection officer to ensure compliance. Organizations who breach the standards set by the Act will be sentenced to a term not exceeding 2 years or required to pay a fine not exceeding 2 million (Parish Court) or sentenced to a term not exceeding 7 years (Supreme Court).

Key Provisions

The photographed person is allowed to ask the data controller to stop using or storing their image within a time frame reasonable to the circumstances or refrain from using the image for a specific purpose or in a specific manner. The organization has 21 days to notify the person that they have stopped or intend to stop using said image. The basis on which the request may be made is that the use of the image is causing or is likely to cause substantial and unwarranted damage or distress to the person or another and that damage or distress is or the image has been retained for longer than the period of time for which it may be retained under any law. An individual is within his/her rights to stop/prevent the use of their image for marketing purposes. **Any images obtained for a specific purpose(s), cannot be used for another purpose or kept for longer than is necessary to fulfill that purpose.**

Conclusion

Until the Data Protection Bill becomes law, how civil society organizations use images of communities they engage will have to be guided by internal policies and human rights and social justice principles to which they adhere. Though the possibility for an organization to be sued for non-consensual use of images may be limited and may only become an issue of intellectual property matters of copyright

are involved, the standard to be applied should be one that recognizes the rights and realities of the individual in question, and whatever challenges using their image may cause them. When the Data Protection Bill becomes law (assuming the exist provisions remain unchanged), adhering to this standard will make the transition less onerous and jarring.

J-FLAG is a human rights and social justice organization focused promoting the rights, well-being and livelihood of LGBT Jamaicans

