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## Online Harassment: Can Cyberbullying Laws Keep Up with Technology?

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# ONLINE HARASSMENT: CAN CYBERBULLYING LAWS KEEP UP WITH TECHNOLOGY?

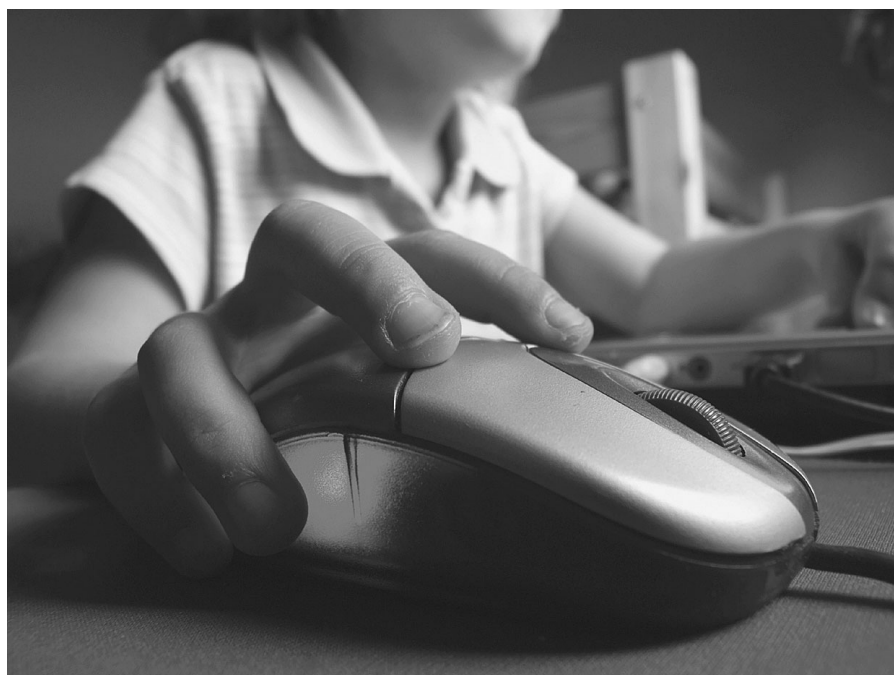
*by* ALLISON LOCKHART

Imagine being in eighth grade again, and a cute boy wants to be your friend on a social networking site.<sup>1</sup> You accept, and you really like him, so you begin an online relationship.<sup>2</sup> Then one day, your new boyfriend tells you that you aren't a very nice person.<sup>3</sup> He tells you that everyone who knows you hates you, the world would be a better place without you, and that he hopes you have a terrible life.<sup>4</sup>

This is what happened in 2006 to Megan Meier, who, at the age of 13, hung herself in her bedroom closet 20 minutes after having such a conversation with her online boyfriend, Josh Evans.<sup>5</sup> Megan had never met Josh in person be-

cause he did not actually exist; the mother of one of Megan's classmates had created the Josh Evans persona to harass Megan.<sup>6</sup>

Megan's was one of the first cyberbullying cases to attract national media attention.<sup>7</sup> Although most cases of cyberbullying do not lead to suicide, they typically involve "repeated, unwanted aggressive behavior over a period of time," causing victims to experience mood swings, depression, and general disinterest in everyday activities.<sup>8</sup> Megan's story gave the issue of cyberbullying national attention, but the number of cyberbullying cases continues to increase each year.<sup>9</sup>



Many children and young adults have created a virtual life for themselves through Facebook, Twitter, and dozens of other websites, and bullies have taken notice.<sup>10</sup> These websites encourage making connections with people who share similar interests, so it is not uncommon for adolescents to become friends with someone they have never met in person.<sup>11</sup> While the child usually has good intentions, the new friend may not, and the door has now been opened for cyberbullying.

Victims of cyberbullying often feel trapped by the bully.<sup>12</sup> High school senior Christopher Cottingham explains, “Since the Internet is a huge part of our lives, we can’t escape it. The only option for escape is to delete every medium the bully has acted through, like Facebook and Twitter accounts.”<sup>13</sup> Because of the pervasiveness of a cyberbully’s actions in the victim’s life, it is not surprising that cyberbullying victims have reported experiencing depression at higher rates than victims of traditional, face-to-face bullying.<sup>14</sup> Researchers attribute this to findings from other studies that victims of cyberbullying are more likely to feel helpless and isolated because they are being attacked by a faceless, and frequently nameless, predator.<sup>15</sup>

Authorities are often unsure of how to handle cases involving online predators, and the tragic case of Megan Meier demonstrates the inherent conflict they face when trying to prosecute cyberbullies. First, the First Amendment grants even bullies the right of free speech.<sup>16</sup> Second, state laws addressing cyberbullying tend to be hard to apply.<sup>17</sup> For example, there were two women found responsible for the cyberbullying that led to Megan Meier’s suicide.<sup>18</sup> Ultimately, only one of these women was convicted under the federal Computer Fraud and Abuse Act.<sup>19</sup> This was later overturned because the judge felt a conviction under that statute was not appropriate under the circumstances of Megan’s case.<sup>20</sup>

In the five years since Megan’s untimely death, many states passed legislation in an attempt to address the prevention and punishment of online bullying.<sup>21</sup> Illinois enacted two separate laws to address cyberbullying.<sup>22</sup> The first, which became effective in 2001, prohibits harassment through electronic communications.<sup>23</sup> Violation of this statute will result in a Class B misdemeanor, which carries a punishment of up to six months in jail and/or a fine of up to \$1,500.<sup>24</sup>

The second, a 2001 statute that was heavily amended in 2009, defines and prohibits cyberstalking.<sup>25</sup> Violation of this statute is a Class 4 felony, which carries a punishment of between one and three years in a state penitentiary and/or a fine of up to \$25,000.<sup>26</sup> A 2011 amendment to both of these statutes added instant messaging, email, text messaging, and voicemail as prohibited forms of harassing communication.<sup>27</sup>

In addition to defining cyberbullying and making it a punishable offense, Illinois also enacted an Internet safety curriculum as part of the School Code

statute.<sup>28</sup> This statute requires all Illinois public schools to incorporate an age-appropriate Internet safety component into the curriculum at least once a year, beginning with the 2011-2012 school year, for students in grades 3 through 12.<sup>29</sup> This safety course should address the risks and consequences of transmitting sexually explicit images, as well as safe and responsible use of cell phones, instant messaging, chat rooms, email, and social networking websites.<sup>30</sup>

While some opponents of cyberbullying laws cite the First Amendment's guarantee of the right to free speech, Illinois courts have taken a different view.<sup>31</sup> In the 2010 Chicago case of *People v. Zlatan Sucic*, the constitutionality of the new Illinois cyberstalking law was tested.<sup>32</sup> Sucic was charged with cyberstalking and harassment through electronic communications after sending threatening emails and voice messages to a former girlfriend.<sup>33</sup> Sucic claimed that these statutes were overly broad and criminalized forms of expression that were protected by the First Amendment.<sup>34</sup>

In upholding the cyberstalking statutes, the Illinois Appellate Court referred to the high threshold that the State must satisfy to convict a defendant.<sup>35</sup> The court also noted that Sucic's threatening language was used with the intent to cause a reasonable fear of imminent death or bodily harm and therefore was not a constitutionally protected form of speech.<sup>36</sup> This effectively clarified the court's position on the validity of the new cyberbullying statutes, creating a roadmap for prosecutor's to convict bullies under the statute in the future.

In addition to these statewide laws against cyberbullying, many Illinois school districts have passed local ordinances to address the problem.<sup>37</sup> In Park Ridge, Ill., two teenage girls were charged with violating a local harassment ordinance after they created a fake Facebook account and used it to publicly post derogatory comments about another classmate.<sup>38</sup> After a police investigation revealed the identity of the girls in late December 2010, they were charged under the local cyberbullying ordinance and are currently scheduled to appear before the Park Ridge Peer Jury.<sup>39</sup>

While some parents believe that schools should address online harassment through computer safety classes, legislators have tried to combat cyberbullying with various new laws making these actions criminal.<sup>40</sup> However, because cyberbullying is relatively new, laws addressing this problem are still young and largely untested. Only time will tell how helpful they will be at preventing cyberbullying and protecting children. There is no doubt that the new wave of

harassment laws will have to keep up with technology to be effective in the future.

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NOTES

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- 24 720 ILCS § 135/2 (2009).
- 25 720 ILCS § 5/12-7.5 (2010).
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- 27 *Id.*
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- 29 *Id.*
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