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Technology & Management

Cyberstalking: Navigating a Maze of Laws

By [Harry A. Valetk](#)

New York Law Journal

Aside from its infinite wonders, the Internet's low cost, ease of use, and anonymous features have given criminals a fascinating new place to misbehave. And, as more and more people make the Internet a home within the home, more and more predators are misusing new technology to harass, terrorize, and stalk victims like never before.



image: Eyewire

To guide lawyers and Internet users through the maze of varying laws on the subject, this article will define "cyberstalking," discuss existing state laws on the issue, and offer safety tips on how to avoid becoming a victim of this new-millennium crime.

What Is Cyberstalking?

Although no universal definition exists, cyberstalking occurs when an individual or group uses the Internet, e-mail, or other electronic communications to stalk or harass another. On-line, stalking involves repeated attempts to contact someone on the Internet, using e-mail, chat rooms, bulletin boards, or instant messages.

Unlike other means of stalking, the Internet also enables cyberstalkers to incite others against their victims. For example, by impersonating the victim, a cyberstalker can simultaneously send lewd e-mails to employers, post inflammatory messages on multiple bulletin boards, or even offend hundreds of chat-room participants. Often, the victim is banned from bulletin boards, accused of improper conduct, and flooded with threatening messages.

For many victims, cyberstalking typically means enduring months of

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terror before seeking help. And, even after they decide to ask for help, few know where to turn.

In a recent e-mail to Wiredpatrol.org, an Internet safety organization, one victim wrote, "This guy named Raul on . . . message boards has been making threats about raping me and then killing me. Is there anything I can do about that?" For Internet service providers (ISPs), the skirmish usually begins with the flood of inquiries by victims, offended users, or government investigators.

At the core of the problem is that many local law enforcement departments lack the proper training and resources to investigate cyberstalking cases. Consequently, some police officers suggest victims contact their ISP for technical assistance. Others simply advise victims to shutoff their computers.

But often the danger is real, and the consequences of neglect tragic. Last year, for example, a Massachusetts man was sentenced to five years in prison after pleading guilty to stalking, and raping, a 14-year-old girl he met in a chat room.^{[1]†} Another case involved more than two years of harassment by a man sending postings soliciting sex with Deborah Boehle's 9-year-old daughter. Surviving this traumatizing ordeal, Ms. Boehle confessed, "It never occurred to me that the Internet could be used as a weapon."^{[2]†}

No Uniform Federal Law

Yet, despite the elusive, multi-jurisdictional nature of cyberstalking, no uniform federal law exists to protect victims or define ISP liabilities. Instead, federal law only imposes a \$1,000 fine or five years imprisonment to anyone transmitting in interstate commerce any threat to kidnap or injure someone.^{[3]†} The absence of a clearly defined cyberstalking crime at the federal level has forced some states to draft their own specific legislation. The result is a complicated maze of state laws offering varying definitions, protections, and penalties.

At last count, 41 states, including New York, had laws expressly prohibited harassing conduct through the Internet, e-mail, or other electronic means. In New York and other states, cyberstalking is part of the general stalking or harassment laws. Other states, like North Carolina, have a separate section under special computer crime legislation.^{[4]†} The general stalking or harassment laws of other states may be construed to cover cyberstalking without expressly stating that the Internet or e-mail is also covered. Still, our current patchwork of local laws barely protects some victims, while altogether neglecting others.

To the detriment of victims, conflicting state statutes -- riddled with complex jurisdictional issues -- often deter law enforcement from ever getting involved. For example, to rise to a level prohibited by law, Arizona's stalking statute only prohibits credible threats of violence against the victim, while California and South Carolina prohibit threats against the victim's immediate family.^{[5]†} In Maine, residents enjoy more protection, since a stalker's course of conduct can constitute an implied threat.^{[6]†}

Penalties also vary from state to state. In New York, for example, cyberstalking is a misdemeanor, while Illinois considers it a Class 4

felony.^{[7]†} In cases where traditional stalking also occurs, heftier penalties usually apply.^{[8]†}

Confusion Abounds

Differing statutory definitions and standards foster confusion. To be guilty of cyberstalking in Massachusetts, for instance, the perpetrator must have an intent to cause "imminent fear."^{[9]†} While in Minnesota and Texas, the perpetrator must only have knowledge that he or she is causing fear.^{[10]†} That's why a victim's responses to the e-mails or electronic communications can be important.

Most states require direct communication with the target (or family), but some require only sending a message that the person is likely to receive. A common example would be a list messaging service that sends e-mail to a host of subscribers, (e.g., Arkansas or Wisconsin).^{[11]†}

Most states require that threats be against the person (or family) receiving the e-mail, while Washington goes so far as to prohibit threats against "any other person."^{[12]†} North Dakota's statute goes even further, defining harassment to include a threat to inflict injury on a person's reputation.^{[13]†} Others include obscenity, lewd or profane language, but are usually tied with intent to harass.^{[14]†} Another group of states include damage to property within the meaning of cyberstalking or cyberharassment.

Among the most generous definitions, Arizona's statute simply requires that a victim be "seriously alarmed" or "annoyed."^{[15]†} Illinois' statute prohibits spreading viruses in the same legislation.^{[16]†} Some increase the offense from a misdemeanor to a felony if there were prior similar contacts with the victim, or prior similar bad acts. A few states increase the penalty if the offender is a convicted felon. Wisconsin is similar to Arkansas, but also prohibits anonymous e-mail or other actions that attempt to prevent disclosure of identity (if made with intent to harass).

Keep the Evidence

Given the varying standards, ISPs should instruct users to keep a full record of all harassing e-mail. In some states, authorities must see if consent was given or whether the person requested that the contact stop. Some states require more than one communication or contact before pronouncing the activity illegal. Also, in some states where e-mail contact is only one of several methods of harassment or stalking, one e-mail might help show that the contacts were "repeated" or frequent enough to violate these statutes. Bottom line, victims must learn to resist their natural impulse to delete offensive or threatening messages. In most cases, the key to a successful cyberstalking prosecution is to preserve the full electronic evidence trail.

Prevention Tips

Until a uniform federal standard exists, the best source for cyberstalking guidance are the states with legislation on the subject. To guard against cyberstalking or other forms of on-line harassment, attorneys should recommend the following:

- Do exercise extreme caution about meeting on-line acquaintances in person. If you choose to meet, do so in a public place and take along a friend;
- Do log off or surf elsewhere if a situation on-line becomes hostile;
- Do familiarize yourself with your ISP's acceptable-use policy expressly prohibiting cyberstalking; and
- Do contact a local law enforcement agency, if a situation places you in fear.
- Do not share personal information in public spaces anywhere on-line;
- Do not give personal information to strangers, including in e-mail or chat rooms;
- Do not use your real name or nickname as your screen name or user ID. Pick a name that is gender- and age-neutral; and
- Do not post personal information as part of any user profile.

Harry A. Valetk is an attorney with the U.S. Department of Justice in New York City. The opinions expressed here are the author's and not those of the U.S. Government.

FootNotes:

[1] Associated Press,
www.boston.com/news/daily/21/internet_stalker.htm (visited April 25, 2002.)

[2] Rebecca Raphael, Stalking in Cyperspace: New Medium, Old Crime, ABCNEWS.com,
abcnews.go.com/onair/2020/2020_000224_cyberstalker_feature.html
(visited April 25, 2002.)

[3] 18 U.S.C. § 875(c).

[4] Compare N.Y. PENAL LAW § 240.30, with N.C. Gen. Stat. § 14-196.3, ARK. CODE ANN. § 5-41-108(a)(1), 720 ILL. COMP. STAT. § 5/12-7.5.

[5] Compare ARIZ. REV. STAT. § 13-2921, with CAL. PENAL CODE § 422, S.C. CODE ANN. 16-3-1700 (A)(2).

[6] See, e.g., ME. REV. STAT. tit. 17A § 210-A, COLO. REV. STAT. § 18-9-111.

[7] Compare N.Y. PENAL LAW § 240.30 (making on-line harassment a Class A misdemeanor), with 720 ILL. COMP. STAT. § 5/12-7.5 (making cyberstalking a Class 4 felony).

[8] See e.g., N.Y. PENAL LAW §215.51, VA. CODE ANN. § 18.2-60(A)(1).

[9] See, e.g., MASS. GEN. LAWS ch. 265 § 43.

[10] See, e.g. MINN. STAT. § 609.749, TX. PENAL CODE ANN. 42.07.

[11] ARK. CODE ANN. § 5-41-108(a)(1), WIS. STAT. § 947.0125.

[12] See, e.g., WASH. REV. CODE § 9A.46.020,(1)(a)(i).

[13] N.C. CENT. CODE § 12.1-17-07.

[14] See, e.g. WIS. STAT. § 947.0125.

[15] ARIZ. REV. STAT. § 13-2921.

[16] 720 ILL. COMP. STAT. § 135/1-2(a)(3).

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