

Stalking & Harassment in the Digital Age

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Overview of presentation

1. Difficulties in defining behaviors
2. Role of technology
3. Major federal statutes
4. Sampling of state laws

Defining the problem...

- ***No universally accepted definitions***
- Cyberstalking, cyberharassment, and cyberbullying often used interchangeably
- Cyberstalkers & Cyberbullies harass their victims.

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Cyberstalking: *Motivation*

1. Sexual harassment
2. Love obsession
3. Hate and revenge vendettas
4. Power and ego issues

Online (or Cyber) Harassment

May or may not involve a credible threat – depending on state statute

Involves use of Internet, cell phones, other technology to send or post text or images intended to hurt or embarrass another person

Individual or group w/ no legit purpose uses e-communication to cause emotional distress to another

Online Harassment

- Defined by perp’s desire to frighten or embarrass the victim
- Spreading gossip and rumors
- Sending / posting “rude or nasty” comments
- Perp often wants to teach victim a lesson

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Online Harassment

Although terms online harassment and Cyberstalking often used interchangeably, cyberstalking has been characterized as an escalation of online harassment.

Classification may turn on perpetrator's objectives and motives.

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Cyberstalking

- The use of the Internet, email, other electronic communication devices to ***stalk or harass*** another person
- Generally involves a course of conduct, not a solitary act.

Cyberstalking

- Characterized by a perp relentlessly pursuing victim online.
- Cyberstalkers often fueled by revenge, anger or obsession.
- Purpose: to cause distress to the victim and derive power from that distress.

Technology: *Delivery of Message*

Enhances Distribution of Communications:

- Efficient
- Inexpensive
- Instant
- Anonymous
- Content can be distributed to a wider, more public forum

Technology: *Means of Stalking*

- Repeated emails / E-mail bombs
- Websites
- Impersonation of Victim
- Stalking by Proxy

Stalking = Cyberstalking?

- CO. man installed GPS in estranged wife's car to check whereabouts.
- CO. stalking statute contained language: "under surveillance."
- Ct. ruled surveillance included electronic surveillance;
- Husband's act constituted stalking.
State v. Sullivan, 53 P.3d 1181 (Colo. Ct. App. 2002)

Stalking = Cyberstalking

- Man & estranged wife living in same home
- Husband installed tiny video camera in wall of her bedroom.
- Ct. held that use of this technology constituted stalking under state law.

H.E.S. v. J.C.S., 815 A.2d 405 (N.J. 2003)

Email

Stalkers can easily send threatening email or texts with push of a button i.e., "187."

Stalker can create E-mail bombs which *automatically* send messages at designated intervals

Websites

Cyberstalkers can create websites and post threatening/harassing statements.

Provides for constant harassment for all to view.

Escalation of cyberstalking:

- 20 y/o N.H. woman murdered by former schoolmate.
- Obsession began in 8th grade; never met in person.
- Created website (up for 2.5 years) dedicated to woman: his hatred and jealousy, stalking habits, and plans to kill her.

Cyberstalking:

- Kansas City man dated woman 6 weeks
- For 2.5 years he posted online sexual ads w/ her name & address
- Up to 30 men per day came to her home believing they would receive sexual favors
- Pleaded guilty to cyberstalking – 2 years

Impersonation of Victim

By posting inflammatory messages on message boards, Web pages, and chat rooms, cyberstalker provokes others to “flame” the victim.

Victim may be accused of improper conduct and banned from groups.

Stalking by Proxy

Inciting "innocent" 3d parties to stalk

Man impersonated victim in chat rooms:

- Posted her phone #, address, messages re: rape fantasies.
- On at least 6 occasions, men knocked on her door saying they wanted to rape her.

Proxy Stalking

Sent hate emails in victim's name (w/ address and phone #) to groups of Satanists, drug users and pornographers, resulting in threat on victim's life.

Laws Aimed at Cyberstalking

No federal statute directed specifically at cyberstalkers, but several existing statutes, each with limited reach, can address cyberstalking.

18 U.S.C. 875(c) *Transmitting threats*

- Prohibits transmission of any communication in interstate or foreign commerce containing a threat to injure another
- Limited to communication of *actual threats*
- Would not apply if victim was merely harassed or annoyed
- May only apply to direct contact w/ victim (i.e., not Internet postings or stalking by proxy.)

Threat?

U.S. v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997)

- College student emailed friend sadistic stories about raping and killing classmate "Jane Doe."
- Jane Doe learned of contents of writings
- 6th Cir. – Emails **NOT** communications containing threat; "attempts to foster a friendship based on shared sexual fantasies."

47 U.S.C. 223 *Fed. Telephone Harassment Statute*

2006 – Congress expanded definition of "telecommunications device" to include email communications.

- Perpetrator must remain anonymous
- Covers both harassment and threats
- Applies only to direct communications

18 U.S.C. 2261A

Fed. Interstate Stalking and Prevention Act

- Stalker no longer has to **physically** cross state lines
- Can travel in interstate or foreign commerce (*Is this travel via Internet?*)
- Intentionally engage in a course of conduct
- That causes substantial emotional distress to victim, or places victim in rsble fear of death or serious bodily injury

18 U.S.C. 2425

Transmitting Information about a Minor

Prohibits stalking of minors for sexual purposes

Criminalizes use of interstate or foreign commerce, including Internet:

- to knowingly communicate
- w/ intent to solicit or entice minor under 16
- Into engaging in unlawful sexual activity

State Laws

Complicated maze of state laws w/ varying definitions, protections, and penalties.

Some states have enacted laws specifically addressing cyberstalking and cyberharassment

Some states have amended existing stalking and harassment laws to include electronic communications.

State laws re: cyberstalking

Most stalking laws require credible threat of violence against victim
Some include threats against immediate family
Others require only that alleged stalker's course of conduct constitute an implied threat

State laws

Credible threat
Direct communication
Pattern of conduct / series of acts
Directed at a specific person
Physical proximity

Unlawful Computerized Communications

- W/ purpose to frighten, intimidate, threaten, abuse, or harass another,
- Sends message *to the person* via email or computerized communication system, (or w/ the rsble expectation that the person will receive message) and
- Message contains threat to cause physical injury or damage property

Ark. Code Sec. 5-41-108
Wis. Stat. Sec. 947-0125

Wis. – Stalking (felony)

- Course of conduct dir. at specific individual
- Rsble person would suffer serious emot. distress or fear bodily injury or death to self/family member
- Victim does suffer serious emot. distress or fears bodily injury/death to self/family member
- Includes provision for Stalking by Proxy

Wis. Stat. 940.32

Wis. – Harassment (misdemeanor)

- Course of conduct which harasses or intimidates the victim
- Accompanied by credible threat
- Threat places victim in rsble fear of death/great bodily harm

Conn. – Stalking (2nd degree)

Intent to cause another to fear for physical safety,

Willfully and repeatedly **follows or lies in wait** for other person, and

Causes that person to reasonably fear for physical safety.

Sec. 53a-181d Class A misdemeanor

Conn. – Stalking (1st degree)

Class D felony if:

Previous stalking conviction, or

Conduct violates a court order in effect at time of the offense, or

Other person is under 16

Sec. 53a-181c

Conn. – *Harassment* (1st degree)

W/ intent to harass, annoy, alarm or terrorize,

Threatens to kill or physically injure that person or any other person, and

Communicates such threat by ... computer network,

In a manner likely to cause annoyance or alarm,

and has been convicted of a felony

Sec. 53a-182b *Class D felony*

Conn. – *Harassment* (2nd degree)

W/ intent to harass, annoy or alarm another,

Communicates w/ person by...computer network,

In a manner likely to cause annoyance or alarm

Sec. 53a-183 *Class C misdemeanor.*

Note:

Depending on jurisdiction, the same acts could be prosecuted under laws prohibiting stalking, cyberstalking, harassment, unlawful use of computerized communication system, harassing by computer, transmitting information about a minor...

Recap:

1. Difficulties in defining behaviors
2. Role of technology
3. Major federal statutes
4. Sampling of state laws

Thank You

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