

Protection of Children Online: Federal and State Laws Addressing Cyberstalking, Cyberharassment, and Cyberbullying

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Summary

While Congress, under the Commerce Clause, has authority to regulate the Internet, Internet "harassment" presents new challenges for legislators in terms of defining and prosecuting such activity. Definitions for these terms vary based upon jurisdiction. Internet harassment usually encompasses "cyberstalking," "cyberharassment," and/or "cyberbullying." If one were to categorize these offenses based on danger or greatest potential harm, cyberstalking would be the most dangerous, followed by cyberharassment and then cyberbullying. Generally, cyberstalking includes a credible threat of harm, while the other two do not. Cyberharassment and/or cyberbullying may cause embarrassment, annoyance, or humiliation to the victim. Some individuals use the terms cyberharassment and cyberbullying interchangeably, while others reserve the term cyberbullying to describe harassment between minors, usually within the school context.

While laws that address cyberstalking exist at both the federal and state levels, the question of how to handle situations that do not involve a credible threat of harm against minors has drawn congressional interest. Recent high-profile cases involving teen suicides illustrate the harmful effects of Internet harassment on young people. To address the problem, H.R. 1966 was introduced in the 111th Congress. This bill would amend title 18 of the United States Code by making cyberbullying a federal crime with a punishment of up to two years of imprisonment and/or a fine.

Legislators have traditionally enacted laws prohibiting child pornography, child luring, and child sexual exploitation. However, Internet harassment potentially causes emotional harm to its victims as opposed to the physical harm inflicted by the aforementioned activities. In addressing these concerns, legislators strive to maintain a balance between enacting statutes broad enough to cover undesirable behavior, while simultaneously narrow enough to prevent infringement upon an individual's right to express oneself under the First Amendment.

The First Amendment protects certain forms of speech, but this protection is limited within the school environment. While school administrators have more flexibility in disciplining children whose speech disrupts the learning environment, this flexibility does not cover all forms of Internet harassment. As Internet harassment is a relatively new phenomenon, courts are just beginning to determine the constitutionality and scope of these school policies and statutes. This report discusses Internet crimes, such as cyberbullying, cyberharassment, and cyberstalking, along with the limitations of such laws in the current environment. It will be updated as events warrant.

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Introduction

Federal and state laws have always played a role in protecting minors from criminal victimization. For example, Congress has enacted laws dealing with child pornography, child luring, and child sexual exploitation. However, given its immediacy, anonymity, and accessibility, the Internet offers a forum, through social networking sites,[1] for harassment and other social ills committed against minors. The Internet's nuances present new challenges for federal and state legislators and law enforcement personnel responsible for defining and prosecuting criminal use. This is especially true with the relatively new crime of Internet "harassment." The term Internet harassment usually encompasses "cyberstalking," "cyberharassment," and/or "cyberbullying." These activities, when committed against minors, may cause emotional harm. Recent high-profile cases involving teen suicides demonstrate the potentially severe consequences of this emotional harm. As such, legislators are faced with determining how to handle the problem.

Various laws, not specific to minors, govern traditional crimes such as stalking and harassment, which generally include a threat of harm. These laws generally criminalize unlawful conduct that fails to rise to the level of assault or battery.[2] Recognizing that the Internet can be used to stalk or harass individuals, Congress and some states have amended "traditional" stalking and harassment statutes to include Internet activity. However, these statutes are generally inapplicable in situations in which minors suffer emotional harm due to embarrassment or humiliation. When, if ever, should criminal sanctions be imposed for these incidents? Should legislators amend traditional stalking and harassment statutes to cover these situations? Or should legislators create new crimes covering such activity? Should such activity conducted by a neighbor, for example, be prosecuted on the federal level because the Internet was used? Or should prosecution of such activity remain at the state level? These are just some of the questions legislators may consider in addressing the problem of Internet harassment of children. While these policy considerations are noteworthy, this report focuses on the applicable constitutional constraints legislators may consider in drafting legislation in this area.

Background

Congressional Authority to Legislate Internet Activities

Generally, states assert jurisdiction over law enforcement authority within their borders. However, Congress may legislate in the state law enforcement arena under certain constitutionally permissible circumstances. For example, Article I, Section 8, Clause 4 of the United States Constitution authorizes Congress to "regulate Commerce with foreign Nations, and among the several States." There are three categories of activities subject to congressional regulation under the Commerce Clause. Congress may regulate the use of the channels of interstate commerce,[3] or

[1] Social networking sites are virtual communities where people convene to chat, instant message (IM), post pictures, share stories, etc. Currently, there is a myriad of social networking sites that are topic specific, i.e., individuals interested in certain sports or have certain medical issues and/or concerns. A social network is basically a huge community of people broken down into smaller communities where you find people of like minds or interests.

[2] Generally, assault is defined as an attempt to cause or purposely, knowing, or recklessly causing bodily injury to another. *See*, *e.g.*, TEXAS PENAL CODE § 22.01.

[3] *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 256 (1964)(stating that "the authority of Congress to keep (continued...)

persons or things in interstate commerce, although a threat may come only from intrastate activities.[4] Finally, Congress may regulate those activities having a substantial relation to interstate commerce (i.e., those activities that substantially affect interstate commerce).[5] As the Internet is an instrumentality of interstate commerce, Congress has the power to enact appropriate legislation. Pursuant to this authority, Congress has enacted laws designed to protect children.

Selected Federal Internet Laws

Congress has enacted several statutes designed to address protection of children on the Internet. These statutes run the gamut from establishing new crimes (i.e., use of interstate facilities to transmit information about a minor)[6] to expanding the scope of existing crimes (i.e., child luring). In addition, Congress has enacted laws designed to curtail both the downloading of inappropriate content by children and the uploading of impermissible personal information from children.[7]

Child Online Privacy Protection Act (COPPA)/Child Online Protection Act (COPA)/Children's Internet Protection Act (CIPA)

The Child Online Privacy Protection Act (COPPA)[8] is directed to the protection of children less than 13 years of age from operators of commercial websites or online services.[9] COPPA mandates several requirements for sites that either direct their services to children under the age of 13 or have actual knowledge that their general audience site is collecting information from such children.[10] The act applies to individually identifiable information about children, and requires, among other things, that sites post a clear notice of their data collection practices on their home pages and on every page where information is requested.[11]

Another federal statute, the Child Online Protection Act (COPA),[12] restricts access by minors to materials commercially distributed that are harmful to minors.[13] However, COPA has never taken effect because a federal district court issued a preliminary injunction against its enforcement pending trial. The injunction was affirmed on appeal by the Supreme Court, which, on June 29,

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(...continued)

the channels of interstate commerce free from immoral and injurious uses has been frequently sustained.").

[4] *Southern R. Co. v. United States*, 222 U.S. 20 (1991)(upholding amendment to the Safety Appliance Act as applied to vehicles used in intrastate commerce).

[5] *See, United States v. Lopez*, 514 U.S. 549, 558-559 (1995)(citations omitted).

[6] 18 U.S.C. § 2425.

[7] For an in-depth discussion of these laws, refer to CRS Report 95-804, *Obscenity and Indecency: Constitutional Principles and Federal Statutes*, by Henry Cohen.

[8] 15 U.S.C. §§ 6501-6506.

[9] Federal Trade Commission (FTC), How to Comply With The Children's Online Privacy Protection Rule, http://www.ftc.gov/bcp/conline/pubs/buspubs/coppa.htm. Last visited June 5, 2008.

[10] *Id.*

[11] *Id.* COPPA creates an exception for children's e-mail addresses collected for such uses as contests, online newsletters, homework help, and online postcards. In addition, COPPA contains a safe harbor provision for site operators who comply with Commission-approved self-regulatory industry guidelines.

[12] 47 U.S.C. § 231.

[13] *Id.*

2004, remanded the case for trial.[14] On March 22, 2007, a federal district court found COPA unconstitutional and issued a permanent injunction against its enforcement.[15] On July 22, 2008, the Third Circuit Court of Appeals upheld the 2007 decision.[16]

Finally, the narrowest statute, the Children's Internet Protection Act (CIPA),[17] applies only to public libraries and schools and mandates that they employ software filters to restrict access by minors to inappropriate material.[18] CIPA has withstood challenge to its constitutionality.[19]

Use of Interstate Facilities to Transmit Information About a Minor

18 U.S.C. § 2425 prohibits the use of a facility of interstate commerce, such as a computer connected to the Internet, to transmit information about a minor under the age of 16 for criminal sexual purposes. Individuals convicted under this statute face a punishment of a fine and/or maximum imprisonment of five years.

Child Luring

In addition to the aforementioned protections, federal and state legislators have enacted several criminal provisions designed to punish Internet users who hurt minors physically. Some laws that traditionally protect children, such as those used to combat child pornography[20] and luring, have been expanded to apply to situations where an individual uses the Internet to facilitate the crimes. For example, "child luring" consists of an adult knowingly and intentionally inducing a child, by means of a computer, to engage in sexual intercourse or sexual conduct.[21] A majority of states have laws that specifically prohibit electronic luring or solicitation of minors by computer for the purpose of inducing them to engage in illegal sexual conduct.[22] On the federal level, child luring

[14] *American Civil Liberties Union v. Reno*, 31 F.Supp.2d 473 (E.D. Pa. 1999), *aff'd,* 217 F.3d 162 (3d Cir. 2000), *vacated and remanded sub nom. Ashcroft v. American Civil Union Liberties Union*, 535 U.S. 564 (2002), *aff'd on remand*, 322 F.3d 240 (3d Cir. 2003), *aff'd and remanded*, 542 U.S. 656 (2004).

[15] *American Civil Liberties Union v. Gonzales*, 478 F.Supp.2d 775 (E.D. Pa. 2007).

[16] *American Civil Liberties Union v. Mukasey*, 534 F.3d 181 (3rd Cir. 2008).

[17] P.L. 106-554.

[18] 20 U.S.C. § 9134(f) and 47 U.S.C. § 254(h)(6).

[19] *United States v. Am. Library Ass'n*, 539 U.S. 194 (2003)(upholding CIPA's condition imposed on institutions in exchange for government funding).

[20] Federal child pornography statutes are codified at 18 U.S.C. §§ 2251-2260. For an in-depth discussion of these laws, refer to CRS Report 95-804, *Obscenity and Indecency: Constitutional Principles and Federal Statutes*, by Henry Cohen.

[21] *See, e.g.*, N.M. STAT. ANN § 30-37-3.2(b); N.J. STAT. ANN. § 2C:13-6 and CAL. PENAL CODE § 272(b)(1).

[22] ALA. CODE §§ 13A-6-110, 111; ALASKA STATUTES § 11.41-452; ARIZ. REV. STAT. §§ 13-3506.01, 13-1554; ARK. STAT. § 5-27-603; CAL. PENAL CODE §§ 272(B), 288.2; COLO. REV. STAT. §§ 31-21-1001, -1002, -1003, 18-3-306, 18-405.4; CONN. GEN. STAT. § 53A-90A; DEL. CODE. TIT. 11 § 1112A; FLA. STAT. § 847.0135; GA. CODE § 16-12-100.2; HAWAII REV. STAT. §§ 707.756, 707.757, 708.892; IDAHO CODE § 18-1509A; 720 ILCS 5/11-6; IND. CODE § 35-42-4-6; KY REV. STAT. § 510.155; LA. REV. STAT. § 14:81.3; ME. REV. STAT. TIT. 17-A § 259;9 MD. CRIMINAL LAW CODE § 3-324, 11-207; MICH. COMP. LAWS §§ 750.145A, 750.145D; MINN. STAT. § 609.352; MISS. CODE §§ 97-5-27, 97-5-33; MO. REV. STAT. § 546.151; NEB. REV. STAT. § 28-320.02; NEV. REV. STAT. § 201.560; N.H. REV. STAT. §§ 649-B:3, 649-B:4; N.J. REV. STAT. § 2C:13-6; N.M. STAT. § 30-37-3.2; N.Y. PENAL LAW § 235.22; N.C. GEN. STAT. § 14-202.3; N.D. CENT. CODE § 12.1-20-05.1; OHIO REV. CODE § 2907.07; OKLA. STAT. TIT. 21 §§ 1040.13A, 1123; PA. CONS. STAT. TIT. 18 § 6318; R.I. GEN. LAWS § 11-37-8.8; S.D. CODIFIED LAWS § 22-24A-5; TENN. CODE ANN. § 39-13-528; TEX. PENAL CODE § 33.021; UTAH CODE § 76-4-401; VT. STAT. TIT. 13 § 2828; VA. CODE § 18.2-374.3; W. VA. CODE § 61-3C-14B; WIS. STAT. § 948.075.

is covered by 18 U.S.C. § 2422(b), which prohibits the use of any facility or means of interstate commerce to knowingly persuade, induce, entice, or coerce a minor to engage in criminal sexual activity or prostitution, or to attempt to do so.[23] Violators of 18 U.S.C. § 2422(b) face a punishment of a fine and a minimum imprisonment of 10 years or life.

Internet Harassment

Internet harassment is a new phenomenon that presents a challenge for law enforcement, legislators, educators, and parents. The term Internet harassment lacks a uniform definition but usually encompasses cyberstalking, cyberharassment, and/or cyberbullying. It is worth noting that most cyberstalking and/or cyberharassment statutes cover both adult and minor victims. If one were to categorize these activities based on danger or greatest potential harm, cyberstalking would be the most dangerous, followed by cyberharassment and then cyberbullying. Generally, cyberstalking includes a credible threat of harm, while the other two do not. Cyberharassment and/or cyberbullying may cause embarrassment, annoyance, or humiliation to the victim. Some individuals use the terms cyberharassment and cyberbullying interchangeably, while others reserve the term cyberbullying to describe harassment between minors, usually within the school context.

In a criminal context, these activities are predicated on a perpetrator's desire to inflict emotional harm, usually in the form of humiliation or embarrassment. Legislators are faced with several questions in tackling this problem as it pertains to minors. When, if ever, should individuals be criminally liable for causing humiliation or embarrassment to another? Should new laws be created to cover such action? Or, is it sufficient to amend existing laws?

Cyberstalking

Cyberstalking refers to the use of Internet, e-mail, or other electronic communications to stalk another person.[24] A cyberstalker may send repeated, threatening, or harassing messages. Or a cyberstalker can urge other Internet users into harassing or threatening a victim by utilizing Internet bulletin boards or chat rooms. For example, a cyberstalker may post a controversial or enticing message on a board under the victim's name, address, phone number, or e-mail address, resulting in the victim receiving subsequent unwanted responses. Each message, whether from the actual cyberstalker or others, may have the intended effect on the victim, even though the cyberstalker's effort tends to be minimal. Due to the lack of direct contact between the

[23] 18 U.S.C. § 2422(b) states that

> [w]hoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than ten years or for life.

[24] Stalking usually refers to harassing or threatening behavior that is engaged in repeatedly. California was the first state to criminalize stalking due to several high-profile cases, including the 1982 attempted murder of actress Theresa Saldana, the 1988 massacre by Richard Farley, and the 1989 murder of actress Rebecca Schaeffer. Other states passed stalking statutes, sometimes with varying names such as criminal harassment or criminal menace. Physical stalking can include following someone, appearing at a person's home or job, making harassing telephone calls, leaving written messages and/or objects, and vandalizing one's property.

cyberstalker and the victim, it is sometimes difficult for law enforcement to identify, locate, arrest and subsequently prosecute the offender.

The anonymity of the Internet also provides new opportunities for cyberstalkers. A cyberstalker's true identity can be concealed by using different Internet service providers (ISPs) and/or by adopting multiple screen names. Anonymity leaves the cyberstalker in a somewhat advantageous position. Unbeknownst to the target, the perpetrator could be in another state, around the corner, or in the next cubicle at work. The perpetrator could be a former friend or lover, a total stranger met in a chat room, or simply a teenager playing a practical joke.

State and local law enforcement agencies are sometimes hampered by jurisdictional limitations. A cyberstalker located in a different city or state than the victim may present more of a challenge for local authorities investigating an incident. Even if a law enforcement agency is willing to pursue a case across state lines, it may be difficult to obtain assistance from out-of-state agencies when conduct has been limited to harassing e-mail messages without the occurrence of actual violence.

Several states have laws that explicitly include electronic forms of communication within stalking or harassment laws.[25] For example, California legislators amended the state stalking law to expressly include stalking via the Internet.[26] Under California law, a person commits stalking if he or she "willfully, maliciously, and repeatedly follows or harasses another person and ... makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family." The term "credible threat" includes threats that are (1) "performed through the use of an electronic communication device, (2) implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements."[27]

Table 2 provides a list of states that have enacted cyberstalking statutes.

Federal laws designed to combat cyberstalking exist. For example, 18 U.S.C. § 2261A prohibits an individual from using "the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of ... death." However, this statute is inapplicable in situations where both the victim and perpetrator are in the same state or tribal jurisdiction.[28] While this law was amended in 2006 to include "interactive computer service," courts have not addressed the term's scope and applicability to the Internet or instances of cyberstalking that cause "substantial emotional distress."[29]

In addition, 18 U.S.C. § 875 makes it a crime, punishable by up to five years' imprisonment, to transmit any communication in interstate or foreign commerce containing a threat to injure

[25] These states are Alabama, Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New York, Oklahoma, and Wyoming. Arkansas and Maryland have enacted statutes that cover harassment via electronic communications outside their stalking statutes. State laws that do not include specific references to electronic communication may still apply to individuals who threaten or harass others online, but the addition of specific language might make the laws easier to enforce.

[26] CAL. PENAL CODE § 646.9.

[27] Under California law, "electronic communication device" includes telephones, cellular phones, computers, video recorders, fax machines, and pagers.

[28] 18 U.S.C. § 2261A.

[29] *See*, Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 Tit. I, § 113, 119 Stat. 2960 (2006).

another person. Section 875(c) generally applies to any communication actually transmitted in interstate or foreign commerce.[30] This statute has been used primarily against threats conveyed via telephone.[31] However, the law has been expanded to prosecute cyberstalkers. For example, in *United States v. Kammersell*,[32] the court found that the term "transmits in interstate commerce," as it applied to the offense of making threatening communication, encompassed the alleged conduct of sending a threatening message via the Internet, despite the fact that the defendant and victim resided in the same state. The message had been sent from the defendant's computer in Riverdale, Utah, processed through the ISP's message server in Virginia, and then transferred to the victim's computer in downtown Ogden, Utah, a few miles from the defendant's computer.

Thus, 18 U.S.C. § 875 has been expanded to cover threats transmitted via the Internet. However, a threat must be one that a reasonable person would take as a serious expression of an intention to inflict bodily harm and would perceive such expression as communicated to effect some change or achieve some goal through intimidation.[33] In *United States v. Alkhavaz*,[34] the court found that electronic mail messages between the defendant and another individual, expressing sexual interest in violence against third-party women and girls, did not constitute "communications containing a threat." Instead, the court concluded the communications were "attempts to foster a friendship based on shared sexual fantasies."[35]

One could argue that one of the limitations of 18 U.S.C. § 875(c) is its inapplicability to a situation where an individual engages in a pattern of conduct intended to "harass" or "annoy" another (absent some threat). Also, it is unclear whether this statute would apply to a situation in which a person harasses another by posting messages on a "public" bulletin board or in a chat room, encouraging others to harass or annoy the individual. It would appear that in some of these situations, a defendant may be prosecuted under the federal telephone harassment statute, 47 U.S.C. § 223.[36]

[30] *See*, *United States v. Kammersell*, 196 F.3d 1137 (10th Cir. 1999)(concluding that 18 U.S.C. § 875 is a general intent statute requiring the intent "to effect some change or achieve some goal through intimidation.").

[31] *See, e.g., United States v. Freeman*, 176 F.3d 575 (1st Cir. 1999).

[32] 196 F.3d 1137 (10th Cir. 1999).

[33] *See, United States v. Alkhabaz*, 104 F.3d 1492, 1495 (6th Cir. 1997).

[34] *Id.*

[35] *Id.* at 1496.

[36] 47 U.S.C. § 223 was passed in 1934, when the telephone was at the cutting edge of communication technology. It was subsequently amended in January 2006 to cover e-mail communications via the Internet. *See*, Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162 Tit. I, § 113, 119 Stat. 2960 (2006).

Cyberharassment

While cyberstalking laws exist at both the federal and state levels, they are generally inapplicable in situations referred to as cyberharassment and/or cyberbullying, depending upon the jurisdiction.[37]

Federal Telephone Harassment Statute[38]

Under federal law, some instances of cyberharassment may be prosecuted under 47 U.S.C. § 223, which carries a punishment of a fine and/or imprisonment.[39] One provision of this statute makes it a crime, punishable by up to two years in prison, to use a telephone or telecommunications device[40] to "annoy, abuse, harass, or threaten" any person at a dialed number.[41] In 2006, Congress expanded the definition of "telecommunications device" to include e-mail communications. However, the statute still requires that a perpetrator remain anonymous.[42] Although this statute covers both threats and harassment, it applies only to direct communication between a perpetrator and a victim. As such, it would be inapplicable in a situation where a person harasses another person by posting messages on a "public" bulletin board or in a chat room encouraging others to "harass" or "annoy" another individual. In addition, it is worth noting that although the statute has been found constitutional, that determination was made before the statute was amended. In *United States v. Bowker*,[43] the defendant made more than 100 anonymous phone calls to a television news reporter during a seven-month period. Many calls were threatening and sexual in nature.[44] The *Bowker* court reasoned that § 223(a)(1)(C) was not overbroad because

> [T]he focus of the telephone harassment statute is not simply annoying telephonic communications. It also prohibits abusive, threatening or harassing communications. Thus, the thrust of the statute is to prohibit communications intended to instill fear in the victim, not to provoke a discussion about political issues of the day.[45]

The court noted that while § 223(a)(1)(C) could have unconstitutional applications, that fact does not warrant facial invalidation.[46] The court concluded that Bowker's speech was not constitutionally protected because he called his victim "predominately, if not exclusively, for the

[37] Some use the term "cyberharassment" and "cyberbullying" interchangeably, while others use "cyberbullying" to describe situations in which a minor is both the perpetrator and victim.

[38] Courts have found the pre-Internet telephone harassment statute constitutional, but concluded that it cannot be interpreted to include political or public discourse. *See, United States v. Popa*, 187 F.3d 672 (D.C. Cir. 1999).

[39] 47 U.S.C. § 223(a)(2).

[40] 47 U.S.C. § 223(h)(C)(1)(defining "telecommunication device" as "any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet ..."). This definition was added by P.L. 109-162, § 113(a)(3). As such, there is no case law directed toward Internet questions as yet.

[41] 47 U.S.C. § 223(a)(1)(C).

[42] *Id.*

[43] 372 F.3d 365 (6th Cir. 2004), *vacated on other grounds*, 543 U.S. 1182 (2005).

[44] *Id.* at 372-73.

[45] *Id.* at 379.

[46] *Id.* at 380 (*citing Parker v. Levy*, 417 U.S. 733 (1974)(stating that facial invalidation is inappropriate when the remainder of the statute "covers a whole range of easily identifiable and constitutionally proscribable conduct.")).

purpose of invading her privacy and communicating express and implied threats of bodily harm."[47] Courts have yet to address this statute as it applies to Internet "harassment."

State Cyberharassment Statutes

Examples of cyberharassment include sending threatening or harassing e-mail messages and instant messages to another individual, posting highly offensive and/or hurtful blog entries about certain individuals, or creating entire Web pages for the sole purpose of tormenting and humiliating another individual. Generally, cyberharassment differs from cyberstalking in that a credible threat is not involved. Cyberharassment statutes vary by jurisdiction. Some are incorporated in general harassment statutes, while others are separate statutes. For example, the Iowa harassment statute provides that

> [a] person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:
>
> > (1) Communicates with another by telephone, telegraph, writing or via electronic communication without a legitimate purpose and in a manner likely to cause the other person annoyance or harm ...[48]

Virginia's "harassment by computer" statute states:

> If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.[49]

Table 1 provides a list of states that have cyberharassment statutes.

Table 3 provides the statutory language addressing cyberharassment.

Cyberbullying

Although the Internet is a relatively new medium, it is being used for an old purpose—harassment of others. Children experiment online with different personas, and may be nastier in the Internet's anonymous atmosphere than they would be in person. In addition, targeted mockery can be far more painful when it is public, permanent, and written than when muttered in passing in a school hallway. Creating defamatory or sexually explicit depictions of students and school personnel on websites are two types of student Internet speech that may constitute cyberbullying.[50]

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[47] *Id.*

[48] IOWA CODE § 708.7(1).

[49] VA. CODE 18.2 § 152.7.1.

[50] *See, e.g.*, *Mahaffey v. Aldrich*, 236 F.Supp.2d 779, 781-82 (E.D. Mich. 2002)(holding that a student's suspension for co-creating a website entitled "Satan's web page" violated his First Amendment right, absent proof of disruption to school by website or that the website was created on school property).

Cyberbullying generally refers to harassment occurring among school-aged children through the use of the Internet.[51] Recent incidents of teen suicides appear to illustrate the harm that may be caused by cyberbullying. According to media accounts, classmates sent Vermont teenager Ryan Patrick Halligan several instant messages questioning his sexuality. In addition, the teen was threatened, taunted, and incessantly insulted online. Ultimately, Halligan committed suicide.[52] Responding in part to the suicide, Vermont's state legislature passed an "anti-cyberbullying" law in 2004.[53] The statute requires schools to create disciplinary policies encompassing both on- and off-campus (limited to school-sponsored activities) bullying among school children.[54] The statute provides a broad definition of "bullying" that may be interpreted to include Internet misbehavior.

Several other states have passed legislation requiring or authorizing school districts to adopt cyberbullying policies. For example, in Arkansas, cyberbullying was added to the schools' anti-bullying policies and included in provisions for school officials to punish students for some off-campus activities "if the electronic act is directed specifically at students or school personnel and is maliciously intended for the purpose of disrupting school and has a high likelihood of succeeding in that purpose."[55] However, it should be noted that some of these policies are limited in their application.[56] For example, in Washington, the school district harassment prevention policies are applicable only to actions that take place "while on school grounds and during the day." In other words, some of these policies would not cover bullies from other districts or other states. In addition, adults who "harass" or "cyberbully" minors would not be covered in most instances.

In another teen suicide, the issue of an adult engaging in cyberbullying activities has caused some individuals to use the terms cyberharassment and cyberbullying interchangeably. On May 15, 2008, a federal grand jury indicted a Missouri woman for her alleged role in a MySpace hoax against a minor. The indictment alleged that the defendant created a false identity on the social network MySpace to obtain information from Megan Meier, a teenager. The indictment further alleged that this information was used to "torment, harass, humiliate, and embarrass" the juvenile. The false identity was that of a 16-year-old boy named "Josh Evans." Communications allegedly ensued between Megan and "Josh" for some time. According to media accounts, Megan took her

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[51] *See*, Cyberbullying, http://stopcyberbullying.org/what_is_cyberbullying_exactly.html. Last visited June 3, 2008.

[52] *See*, *e.g.*, States Pushing for Laws to Curb Cyberbullying, at http://www.foxnews.com/story/0,2933,253259,00.html. Last visited July 23, 2008.

[53] See VT. STAT. ANN. TIT. 16 § 1161a(a)(6).

[54] See VT. STAT. ANN. TIT. 16 § 11(a)(32)(A)-(C). The statute provides:

> Bullying means any overt act or combination of acts directed against a student by another student or group of students and which:
>
> (A) is repeated over time;
>
> (B) is intended to ridicule, humiliate, or intimidate the student; and
>
> (C) occurs during the school day on school property, on a school bus, or at a school-sponsored activity, or before or after the school day on a school bus or at a school-sponsored activity.

[55] Other states with cyberbullying policies include Idaho, Iowa, Minnesota, New Jersey, Oregon, South Carolina, and Washington.

[56] Some courts have concluded that a school district may not punish a student for out-of-school speech. *See, e.g., Killion v. Franklin Regional School Dist.*, 136 F. Supp.2d 446 (W.D.Pa. 2001)(holding that school could not punish student for list disparaging the athletic director); *Flaherty v. Keystone Oaks School Dist.*, 247 F. Supp.2d 693 (W.D.Pa. 2003)(holding that the school could not punish a student for "trash talk" about a volleyball game); *Latour v. Riverside Beaver School Dist.*, No. 05-1076, 2005 WL 2106562 (W.D.Pa. August 24, 2005)(enjoining school from punishing a student for rap song lyrics).

life after receiving a cruel message from "Josh."[57] State prosecutors declined to prosecute this "harassment" activity,[58] noting that the woman's intent did not cross a threshold into criminal activity based on state laws governing stalking, harassment, and child endangerment.[59]

It is important to note that the federal government did not charge the Missouri woman with harassment of Meier. Rather, the government's legal theory was based on the Computer Fraud and Abuse Act,[60] specifically 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(2), which makes it a felony punishable by up to five years of imprisonment if one "intentionally accesses a computer without authorization ..., and thereby obtains ... information from any protected computer[61] if the conduct involved an interstate ... communication" and "the offense was committed in furtherance of any ... tortious act [in this case intentional infliction of emotional distress] in violation of the ... laws ... of any State." Prosecutors alleged that the defendant violated MySpace's terms of use[62] by using a fictitious name, thereby giving her no authority to access MySpace.[63]

To address the problem of cyberbullying, H.R. 1966 was introduced on April 9, 2009, during the 111th Congress.[64] This bill would amend title 18 of the United States Code by making cyberbullying a federal crime with a punishment of up to two years of imprisonment and/or a fine. Specifically, section 3 of H.R. 1966 states that:

> (a) Whoever transmits in interstate or foreign commerce any communication, with the intent to coerce, intimidate, harass, or cause substantial emotional distress to a person, using

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[57] *See*, *e.g.*, "Teen's Neighbor Charged in Death-Indictment for Alleged Role in MySpace Prank Sets Precedent," Washington Post, page C3, May 16, 2008.

[58] *See*, *e.g.*, "No charges to be filed over Meier suicide," St. Charles Journal, at http://stcharlesjournal.stltoday.com/articles/2007/12/03/news/sj2tn20071203-1203stc_meier.ii1.txt. Last visited July 29, 2008.

[59] At the time of the hoax, Missouri's harassment statute was limited to telephone activity. However, state legislators subsequently passed legislation expanding the state's stalking and harassment laws to include electronic communications. In addition, the new law provides for harsher penalties for some violations. For example, harassment would be a misdemeanor unless committed by a person 21 years of age or older against a minor 17 years of age or younger. At that point, the crime would be classified as a felony. V.A.M.S. § 565.090.

[60] The Computer Fraud and Abuse Act (CFAA) has been previously used to address the problem of hacking. It appears that this may be the first time the statute has been used in a "harassment" or social networking case.

[61] Under the statute, a "protected computer" is one used in interstate or foreign commerce. Courts have interpreted this term very broadly. *See, United States v. Mitra*, 405 F.3d 492, 495 (8th Cir. 2005)(stating that "[e]very cell phone and cell tower is a 'computer' under this statute's definition; so is every iPod, every wireless base station in the corner coffee shop, and many another gadget.").

[62] MySpace membership requires users to agree to the terms of service (TOS). The TOS requires users to agree "to provide truthful and accurate registration information" and to refrain from "using any information obtained from MySpace services to harass, abuse, or harm other people."

[63] On November 27, 2008, jurors found the defendant guilty on three lesser charges (misdemeanors). The jury was deadlocked on the fourth felony charge of criminal conspiracy. However, the judge subsequently granted the defendant's motion for a judgment of acquittal. In granting the defendant's motion, the judge found that the absence of "minimal guidelines to govern law enforcement" as well as notice deficiencies made a misdemanor violation of the CFAA based upon a "conscious violation of a website's terms of service" void for vagueness. *United States v. Drew*, No. CR 08-0582-GW, 2009 WL 2872855, *13 - *17 (C.D.Cal. August 28 2009). As discussed infra, such statutes violate procedural due process requirements.

[64] This bill is identical to H.R. 6123, introduced in the 110th Congress. Additional bills, such as H.R. 3577, H.R. 4134, H.R. 6120, S. 3016, and S. 3074 were introduced in the 110th Congress, which would have authorized educational grants for Internet crime prevention programs.

> electronic means to support severe, repeated, and hostile behavior, shall be fined under this title or imprisoned not more than two years, or both.[65]

Constitutional Concerns and Considerations

There are constitutional principles that limit the authority of all governmental entities (federal, state, and local) to enact cyberharassment and/or cyberbullying statutes, namely the First and Fourteenth Amendments.

First Amendment: Freedom of Speech

True Threats

The First Amendment declares that "Congress shall make no law ... abridging the freedom of speech." The Fourteenth Amendment's due process clause imposes the same restriction upon the states,[66] many of whose constitutions have a comparable limitation on state legislative action.[67] Although the First Amendment guarantees free speech, the right is not absolute. Governments impose limitations on many types of speech, including fighting words,[68] false statements of fact,[69] and obscene speech.[70] Moreover, courts distinguish between constitutionally protected speech and other less socially valuable categories of speech.[71] Other examples of unprotected speech include speech that incites others to engage in lawless behavior,[72] constitutes true threats,[73] or is protected by intellectual property laws.[74] The U.S. Supreme Court has decided several cases that provide the framework in which states must act to protect the constitutionality of cyberharassment and/or cyberbullying statutes.

The Court has cited three reasons why threats of violence may be outside the First Amendment's protection: "protecting individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur."[75] However, in *Watts v. United States*,[76] the Court held that only "true threats" are outside the amendment's scope. In *Watts*, the defendant attended a political rally and made the statement, "I have already received my draft classification ... I am not going. If they ever make me carry a rifle the first man I want to

[65] The term "electronic means" includes "email, instant messaging, blogs, websites, telephones, and text messages."

[66] *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 489 (1996); *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

[67] *See, e.g.*, LA. CONST. ART. I § 7; MD. DECL. RTS. ART. 40.

[68] *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942).

[69] *Gertz v. Welch*, 418 U.S. 323, 339-340 (1974).

[70] *Miller v. California*, 413 U.S. 15, 26 (1973).

[71] *See, e.g., Pope v. Illinois*, 481 U.S. 497, 500-01 (1987)(discussing how the serious value doctrine tests whether a reasonable person would find value in speech).

[72] *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

[73] *Watts v. United States*, 394 U.S. 705, 707 (1969).

[74] *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 569 (1985).

[75] *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992).

[76] 394 U.S. 705, 705 (1969).

get in my sights is [President] L.B.J."[77] The defendant was arrested and charged with violating 18 U.S.C. § 871(a) for "knowingly and willfully ... [making a] threat to take the life of or to inflict bodily harm upon the President of the United States." The defendant challenged his jury conviction.

The U.S. Supreme Court reversed, holding that, although the federal statute was not unconstitutionally overbroad, the defendant's statement was protected because it was not a "true threat." The Court found that the content of Watts's statement, the context in which the statement was made, and the audience's reaction[78] to the statement were all supportive of Watts's claim that he engaged in protected "political hyperbole."[79] The Court recognized that "true threats" should not be afforded First Amendment protection, and stated, "What is a threat must be distinguished from what is constitutionally protected speech."[80]

Watts did not establish a bright-line test for distinguishing a true threat from protected speech. As such, lower courts have created varying tests for determining whether speech rises to the level of a true threat.[81] The primary federal cases dealing with threat speech have arisen under 18 U.S.C. § 875, which imposes criminal sanctions on anyone who "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another," and 18 U.S.C. § 876, which prohibits threats against the President. The main point of contention among the circuits is whether the focus of a "true threat" test should be on the speaker or the listener. Some circuits evaluate the existence of a threat by determining whether the speaker should reasonably have foreseen his words to be threatening,[82] while others rest the determination on whether a reasonable recipient would be threatened by the statement.[83]

For example, in *Planned Parenthood v. American Coalition of Life Activists*,[84] the 9th Circuit Court of Appeals upheld a damage award in favor of four physicians and two health clinics that had provided medical services, including abortions, to women. The plaintiffs sued under the Freedom of Access to Clinic Entrances (FACE),[85] a federal statute that gives aggrieved persons a right of action against whomever by "threat of force ... intentionally ... intimidates any person because the person is or has been ... providing reproductive health services." The defendants had published "WANTED," "unWANTED," and "GUILTY" posters with the names, photographs, addresses, and other personal information of abortion doctors, three of whom were subsequently murdered by abortion opponents. The defendants also operated a "Nuremberg Files" website that listed approximately 200 people under the label "ABORTIONIST," with the legend: "Black font (working); Greyed-out Name (wounded); Strikethrough (fatality)."[86] The posters and website contained no language that literally constituted a threat, but, the court found, "they connote something they do not literally say," namely "You're Wanted or You're Guilty; You'll be shot or

[77] *Id.* at 706.

[78] *Id.* at 708 (describing the audience's reaction as that of laughter).

[79] *Id.*

[80] *Id.* at 707.

[81] *See, e.g., United States v. Alkhabaz*, 104 F.3d 1492 (6th Cir. 1997).

[82] *See, e.g., United States v. Fulmer*, 108 F.3d 1486 (1st Cir. 1997)

[83] *See*, *e.g.*, *United States v. Maisonet*, 484 F.2d 1356, 1357 (4th Cir. 1973).

[84] 290 F.3d 1058 (9th Cir. 2002)(en banc), *cert denied*, 123 S.Ct. 2637.

[85] 18 U.S.C. §§ 248(a)(1) and (c)(1)(A).

[86] 290 F.3d 1058, 1065.

killed,"[87] and the defendants knew that the posters had caused abortion doctors to "quit out of fear for their lives."[88] In reaching its decision, the court concluded that a "true threat" is "a statement which, in the entire context and under all the circumstances, a reasonable person would foresee be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person."[89]

Based upon the aforementioned constitutional framework, it is likely that cyberstalking, cyberharassment, and/or cyberbullying statutes may be deemed constitutionally deficient if the situation does not rise to the level of a "true threat" under most circumstances. This analysis may be different depending on whether the challenged language is contained in a state statute or school policy.

Freedom of Speech Within the School Context

School officials are using cyberharassment and cyberbullying policies to take disciplinary action against students, including suspensions and expulsions. When students and/or parents have challenged schools' disciplinary response to students' "offensive" expression, courts have relied on Supreme Court precedent.[90] While students generally retain the protections of the First Amendment, these protections may not always mirror the constitutional protections afforded in other contexts. For example, in *Tinker v. Des Moines Independent Community School District*,[91] the Court held that student expression may be regulated only if it would substantially disrupt school operations or interfere with the rights of others.[92] In *Tinker*, students wore black armbands to school to protest the United States' involvement in Vietnam, despite knowledge that such action was in violation of school policy. The students were asked to remove the armbands, and upon their refusal were suspended until they came to school without the armbands. Thereafter, the students filed a complaint seeking to enjoin the school district from disciplining them. The district court dismissed the complaint, concluding that the school's policy against armbands was reasonable to prevent disturbance of school discipline. On appeal, the U.S. Supreme Court stated that the wearing of armbands for the purpose of expressing different viewpoints is the type of symbolic act within the protection of the First Amendment. Specifically, the Court ruled that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of expression at the schoolhouse gate."[93]

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[87] *Id.* at 1085.

[88] *Id.*

[89] *Id.* at 1077.

[90] *See, Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969); *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986)(upholding suspension of a high school student for a student government nomination speech including the use of obscene, profane language and gestures); *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)(upholding a principal's authority to delete material from a high school paper); and *Morse v. Frederick*, 127 S.Ct. 2618 (2007)(holding that a principal did not violate a student's right to free speech by confiscating a banner she reasonably viewed as promoting illegal drug use).

[91] 393 U.S. 503 (1969).

[92] *Id.* at 507.

[93] *Id.* at 506.

The Court subsequently refined the *Tinker* rationale as it applies to verbal expression or "pure speech." In *Bethel School District 403 v. Fraser*,[94] the Court ruled that school officials had the authority to discipline a student for violating school rules by delivering a lewd speech at a school assembly. In *Fraser*, a high school student gave a nominating speech on a classmate's behalf during an official school-wide assembly for student government elections. In this speech, the student used sexual innuendos. Reaction to the speech was mixed; some students yelled and simulated sexual acts, while other students and teachers were offended. The student was suspended for three days and prohibited from speaking at graduation. In deciding this case, the Court shifted focus from the students' rights articulated in *Tinker*, but instead emphasized the school's duty to inculcate habits and manners of civility and teach students the boundaries of socially appropriate behavior.[95] In addition, the Court noted the importance of protecting minors from vulgar, lewd, or indecent language.[96] As such, the Court concluded that the nomination speech had a disruptive effect on the education process, and that it was up to school officials to determine what manner of speech in the classroom or in school assembly is appropriate.[97]

While it is undisputed that the First Amendment does not protect "offensive" speech while on school grounds, courts are less clear when the speech occurs off school premises. For example, in *J.S. v. Bethlehem Area School District*,[98] an 8th grader created a website that contained derogatory remarks regarding a math teacher and a principal.[99] Most of the website was devoted to ridiculing the math teacher, comparing her to Adolph Hitler and making fun of her physical appearance.[100] In addition, the site contained a solicitation for contributions to pay for a "hit man."[101] School officials subsequently expelled the student, citing the extreme emotional distress suffered by the math teacher and the disruption the website caused at the school.[102] The student argued that his website was protected speech.

In reviewing the case, the Pennsylvania Supreme Court decided two issues: (1) whether the student's speech constituted a true threat; and (2) whether the *Tinker* and *Fraser* standards permit a school district to discipline a student for off-campus speech. In addressing the "true threat" issue, the court determined that, although the website was in extremely poor taste, it was not a "true threat." Specifically, the court stated that "[w]e believe that the [w]ebsite, taken as a whole, was a sophomoric, crude, highly offensive and perhaps misguided attempt at humor or parody. However, it did not reflect a serious expression of intent to inflict harm," as the site focused primarily on the teacher's physical appearance, utilizing cartoons, hand drawings, and a reference to Adolph Hitler.[103]

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[94] 478 U.S. 675 (1986).

[95] *Id.* at 681.

[96] *Id.*

[97] *Id.* at 683.

[98] 807 A.2d 847 (Pa. 2002).

[99] The website contained a disclaimer that stated that "[b]y clicking," or entering, the website, the visitor agreed not to disclose to any school district personnel any information regarding the website or its creator. The disclaimer, however, did not prevent access to the website. *Id.* at 851.

[100] *Id.*.

[101] *Id.*

[102] The math teacher testified that she was frightened and fearful that someone would attempt to kill her. In addition, she suffered "stress, anxiety, loss of appetite, loss of sleep, loss of weight, and a general sense of loss of well being as a result of viewing the website." *Id.* at 852.

[103] *Id.* at 859.

The court then addressed whether First Amendment jurisprudence permitted the school to discipline a student for off-campus speech. It dismissed the argument that the website was off-campus speech beyond the school's jurisdiction. Specifically, the court stated that "[w]e find there is a sufficient nexus between the [w]ebsite and the school campus to consider the speech as occurring on-campus."[104] The court made this determination because the student had accessed the site at school, showed it to a fellow student, and informed other students about the site.[105] The court then reasoned that school officials could punish the student under the *Tinker* or *Fraser* standard[106]—under the *Fraser* standard because the speech on the website was vulgar and highly offensive,[107] and under the *Tinker* standard inasmuch as the website caused a substantial disruption of school activities.[108]

Similarly, in *Wisniewski v. Board of Ed.*,[109] the court affirmed the school district's suspension of an 8th grade student who had disseminated to friends an instant message icon showing a pistol firing a bullet at his English teacher, accompanied by the words, "Kill Mr. Van der Molen."[110] The student created the icon a couple of weeks after his class had been informed of a zero-tolerance policy regarding threats. The student also sent messages with the "objectionable" icon to approximately 15 other students, but not to any school personnel. Another student informed and provided the English teacher with a copy of the icon. The English teacher forwarded the information to the high school and middle school principals, as well as to law enforcement personnel. The student accepted responsibility for the icon's creation and was subsequently suspended for five days. The student was allowed to return to school pending a superintendent's hearing. The English teacher requested and was allowed a class reassignment. A police investigator as well as a psychologist determined that the student intended the icon to be a joke and not a threat toward the English teacher. However, a hearing officer found the determination unpersuasive and irrelevant. She concluded that the student had engaged "in the act of sending a threatening message to his buddies, the subject of which was a teacher."[111] In addition, she concluded that his action had disrupted school operations by "requiring special attention from school officials, replacement of the threatened teacher, and interviewing pupils during class time."[112] The student was subsequently suspended for a semester.

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[104] *Id.* at 865.

[105] *Id.* (stating that "where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech.").

[106] *Id.* at 868-869.

[107] *Id.*

[108] *Id.* However, in *Emmett v. Kent School District No. 415*, the court granted a temporary restraining order in the student's favor. In this case, a high school senior posted a Web page from his home computer that contained mock obituaries of two of his friends. The obituaries were written tongue-in-cheek and inspired, in part, by a creative writing class held the previous school year in which students had been assigned to write their own obituaries. The website became a topic of discussion at the school by both faculty and students. Web page viewers were allowed to vote on who would "die" next. When a local news broadcast described the Web page as featuring a "hit list," the student was immediately placed on emergency expulsion. Subsequently, the expulsion was modified to a five-day suspension. In granting the temporary restraining order, the court found that there was no evidence that the student had intended to threaten anyone, that the site threatened anyone, or that the speech manifested any violent tendencies. 92 F. Supp.2d (1088) (W.D. Wash. 2000)

[109] 494 F.3d 34 (2nd Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 1741 (2008).

[110] *Id.* at 35.

[111] *Id.* at 36.

[112] *Id.*

The student's parents filed suit against the school board and the superintendent, seeking damages under 42 U.S.C. § 1983, claiming that the student's icon was protected speech under the First Amendment and not a true threat. The district court dismissed the claim. The appellate court declined to address whether the icon was a true threat. Instead, the court applied the *Tinker* standard and concluded that even though the icon's creation and transmission had occurred off campus, it was reasonably foreseeable that school officials would find out about the icon and that it would "materially and substantially disrupt the work and discipline of the school."[113] Thus, the appellate court concluded that the First Amendment claim had been properly dismissed.[114]

However, in *Beussink v. Woodland R-IV School District*,[115] a U.S. district court held that the plaintiff had demonstrated the likelihood of success of his First Amendment claim. In this case, a high school student was suspended for the contents of a website that contained vulgar criticism directed toward school officials.[116] The student had created the website at home on his personal computer without using school facilities or resources. However, one of the student's friends became angry with him, accessed the website at school and showed it to the school's computer science teacher. The teacher informed the principal about the site. Immediately after viewing the site, the principal suspended the student. Due to the school's policy regarding absenteeism, the suspension resulted in the student failing all his classes.[117] In reviewing the student's suspension, the court determined that the evidence presented did not establish that Beussink had been disciplined because of the fear of disruption or interference with school discipline, but rather because the principal had been upset by the website's content. Thus, the court concluded that the website did not materially and substantially interfere with school discipline, as *Tinker* requires.[118] As such, the court granted a preliminary injunction against the school district.

In *Layshock v. Hermitage School District*,[119] the court held that a student's speech right had been violated when the school district failed to demonstrate a nexus between the student's parody of the principal and a substantial disruption of the school environment. The student created the "parody profile" of his principal on MySpace by using his grandmother's home computer. This parody profile displayed the principal's picture, which Layshock had copied from the school's website. The template for the profile allowed users to fill in background information and include answers to specific questions. The student answered the questions with what were alleged to be objectionable answers. For example, in response to a question regarding alcohol use, the profile read "big keg behind my desk." The profile also referred to the principal as a "big steroid freak" and reflected that the principal was "too drunk to remember" his birthday.[120] The principal subsequently discovered another parody profile created by another student. Apparently, there were at least three parody profiles.

Evidence was presented that indicated that other students had viewed Layshock's parody profile during school hours. In an attempt to curtail the creation of parody profiles, the school officials

[113] *Id.* at 39.

[114] *Id.* at 40.

[115] 30 F. Supp.2d 1175 (E.D. Missouri 1998).

[116] *Id.*

[117] The absenteeism policy "drops" students' grades in each class by one letter grade for each unexcused absence in excess of 10 days. Suspension days are considered unexcused absences. *Id.* at 1178.

[118] *Id.*

[119] 496 F. Supp.2d 587 (W.D.Pa. 2007).

[120] *Id.* at 591.

sought to block students' access to MySpace. The principal contacted MySpace directly, and succeeded in having the profiles disabled.[121] Students joked and talked about the parody profiles while in school. Teachers interviewed students to determine the profiles' creator or creators. When asked, Layshock admitted to creating one profile. Layshock was informed that he was being considered for disciplinary action for "Disruption of the normal school process: Disrespect: Harassment of a school administrator via a computer/internet with remarks that have demeaning implications: Gross misbehavior: Obscene, vulgar and profane language."[122] At a subsequent hearing, the student received a 10-day out-of-school suspension. Additional discipline included banning him from attending or participating in any events sponsored by the school district, and prohibiting him from participating in the high school graduation ceremony.

The court concluded that there were several gaps in the causation link between the student's off-campus conduct and any material and substantial disruption of school operations. The school district failed to demonstrate which parody profile caused the alleged disruption, as there were three other profiles available on MySpace during the same time frame. In addition, the court noted that the school district had failed to demonstrate that the alleged disruption was due to Layshock's parody and not the administrators' reactions. Furthermore, the court determined that the actual disruption had been rather minimal, as "no classes were cancelled, no widespread disorder occurred, there was no violence or student disciplinary action." As such, the court concluded that the school administrator lacked the authority to punish Layshock for his off-campus creation of the parody profile.

Fourteenth Amendment: Due Process

Another constitutional constraint on legislators and school administrators when drafting legislation or school policies aimed at curtailing "cyberharassment" and/or "cyberbullying" is the Fourteenth Amendment. Its provisions are as follows:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fourteenth Amendment's due process clause includes two distinct aspects: substantive due process[123] and procedural due process. Procedural due process, based on principles of "fundamental fairness," addresses which legal procedures are required to be followed in state proceedings. Relevant issues include notice, opportunity for hearing, confrontation and cross-examination, discovery, basis of decision, and availability of counsel.

Criminal statutes that lack sufficient definiteness or specificity may be held "void for vagueness." Under this doctrine, a governmental regulation or statute may be declared void if it fails to give a person adequate warning that his or her conduct is prohibited or if it fails to set out adequate

[121] *Id.* at 592.

[122] *Id.* at 593.

[123] Substantive due process has generally dealt with specific subject areas, such as liberty of contract or privacy.

standards to prevent arbitrary and/or discriminatory enforcement.[124] In *Grayned v. City of Rockford*,[125] the U.S. Supreme Court stated that

> [v]ague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.[126]

A statute may be so vague or threatening to constitutionally protected activity that it can be pronounced facially unconstitutional. For example, in *Papachristou v. City of Jacksonville*,[127] a unanimous Court struck down as facially invalid a vagrancy ordinance that punished

> dissolute persons who go about begging, ... common night walkers, ... common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, ... persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children.[128]

The Court found the statute facially invalid, as it failed to provide fair notice or require specific intent to commit an unlawful act. The Court concluded that the statute permitted arbitrary and erratic arrests and convictions, provided police officers too much discretion, and criminalized activities that are normally innocent.[129]

A Texas appellate court applied the aforementioned principles in finding a state harassment statute unconstitutional. In *Karenev v. Texas*,[130] the Court of Appeals of Texas held that a state harassment statute that criminalized the sending of repeated "electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another" was unconstitutionally vague, and thus the statute was void. As such, the appellate court reversed the court's judgment and rendered judgment of acquittal. In this case, the defendant, after moving out of the marital residence, sent his estranged wife (Elena) a series of e-mail messages, all written in Bulgarian.[131] In some of these messages, as translated, the defendant predicted his wife's future and stated that "he would raise their child, Elena's mother would be paralyzed, and

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[124] *See, e.g., Chicago v. Morales*, 527 U.S. 41 (1999); *Kolender v. Lawson*, 461 U.S. 352 (1983).

[125] 408 U.S. 104 (1972).

[126] *Id.* at 108-09.

[127] 405 U.S. 156 (1972).

[128] *Id.* at n.1.

[129] Similarly, an ordinance making it a criminal offense for three or more persons to assemble on a sidewalk and conduct themselves in a manner annoying to passersby was found impermissibly vague and void on its face because it encroached on the freedom of assembly. *Coats v. City of Cincinnati*, 402 U.S. 611 (1971).

[130] 2008 WL 902799 (Tex. App.-Fort Worth April 3, 2008).

[131] It is worth noting that at trial, the State relied without objection on translations of the messages by an uncertified translator who was one of the wife's acquaintances. The defendant countered the translations with an Bulgarian translator.

Elena would be in either a mental hospital or prison."[132] In another e-mail, the defendant called Elena "not even a regular slut ..., something much scarier," "a pathological li[ar], a dirty whore, a filthy thief, a rotten user, a sick nymphomaniac, a mental case, and a devil's work."[133] He also told her, "It is about time to pay for all of your filthy deeds which you have committed during your pathetic life!"[134] At trial, the defendant testified that during his travels to Bulgaria he had run into fortunetellers who asked him to relay the messages to Elena regarding her future. Presumably, these were fortunetellers Elena had relied on previously. A jury subsequently convicted the defendant on one count of harassment. The defendant challenged the constitutionality of the harassment statute.

The statute, as previously noted, stated in part that a person commits harassment "if with intent to harass, annoy, alarm, abuse, torment, or embarrass another he sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another."[135] The court, relying on precedent,[136] found that the portions of the harassment statute establishing as an offense the sending of electronic communications that "annoy or alarm" are unconstitutionally vague. Also, the court noted that the terms "harass," "abuse," "torment," and "embarrass" are "susceptible to uncertainties of meaning."[137] In addition, the court determined that the statute fails to "establish a clear standard for whose sensibilities must be offended."[138]

The aforementioned principles are also applicable in the school setting. For example, in *Flaherty v. Keystone Oaks School District*,[139] the court held that the breadth of student handbook policies pertaining to discipline and technology were overreaching, thus violating students' free speech rights. In addition, the court held that the policies were unconstitutionally vague in definition and as applied. In this case, the student was disciplined for posting Internet messages on a message board devoted to high school volleyball in western Pennsylvania. The site was not sponsored or affiliated with the school district. One of the messages stated that one of the opposing players' mothers was a "bad teacher."[140] When school administrators were informed of the postings, the student faced disciplinary action.

In granting summary judgment, the court found the school policies overbroad for several reasons. First, the polices were not referred to or incorporated in the student handbook. In addition, the policy "authorizes discipline where a student's expression that is abusive, offending, harassing, or inappropriate, interferes with the educational program of the schools." The court concluded that

[132] 2008 WL 902799, *2.

[133] *Id.*

[134] *Id.*

[135] TEX. PENAL CODE § 42.07.

[136] In *Kramer v. Price*, 712 F.2d 174 (5th Cir.), the court found the Texas pre-1983 harassment statute to be facially unconstitutional due to vagueness inasmuch as the words "annoy" and "alarm" were inherently vague. In addition, the court found that the statute failed to specify whose sensitivities are relevant. In *Long v. State*, 931 S.W.2d 285 (Tex. Crim. App. 1996), the court found that Texas's 1993 stalking statute suffered the same flaws denounced in *Kramer.* It is worth noting that the current harassment statute mirrors the 1993 stalking statute.

[137] 2008 WL 902799, *7. *See, Long*, 931 S.W.2d at 289.

[138] 2008 WL 902799, *7.

[139] 247 F. Supp.2d 698 (W.D. Pa. 2003).

[140] *Id.* at 700.

the policy did not comply with the *Tinker* requirement that such discipline should be reserved for those circumstances that cause a substantial disruption to school operations.[141]

The court noted that even if it did not find the policy overbroad, it would find the student handbook policies unconstitutionally vague, as the terms "abuse, offend, harassment, and inappropriate" were not defined in any significant manner. In addition, the court found the policies not only vague in definition but also in application. The court noted that school personnel had varying interpretations of the policies. As such, the court concluded that the policies were vague enough to result in arbitrary enforcement. Therefore, the court concluded that the student handbook policies did not provide the student with adequate warning of proscribed conduct.

Conclusion

With the proliferation of potential uses and abuses of the Internet, the crime of Internet harassment presents challenges for law enforcement personnel, legislators, educators, and parents. These challenges are exacerbated by a lack of uniformity in defining the terms cyberharassment and cyberbullying. In addition, jurisdictional limits and the anonymity of the Internet sometimes make it difficult for law enforcement personnel to identify, locate, arrest, and prosecute alleged offenders. While states generally assert jurisdiction over law enforcement authority within their borders, Congress may legislate, pursuant to the Commerce Clause, Internet activities. Or Congress may elect to adopt a wait-and-see approach, monitoring state Internet harassment-related activities and the types of behavior prosecuted.

Legislators and school administrators continue to grapple with ways of combating cyberbullying, in light of recent high-profile teen suicides, while maintaining the free flow of information and opinion on the Internet. As Internet harassment may cause its victims emotional harm as opposed to physical harm, legislators must determine what level, if any, of harassment should be criminalized. While traditional harassment statutes may provide some guidance in drafting legislation and/or school policies, it is important to differentiate between the one-to-one communication of a telephone or e-mail communication and the one-to-many communication of a posting on a public website.

In drafting legislation or school policies, legislators and school administrators must consider the constitutional constraints of the First and Fourteenth Amendments. Statutes and school policies must be narrow enough not to infringe upon protected speech. In addition, such restrictions must provide adequate notice of what activities constitute Internet harassment. While school administrators arguably have more leeway in adopting Internet harassment policies, they are still generally limited to restricting speech that substantially or materially disrupts the educational process. To facilitate this goal, it may be desirable for legislation and school policies to include definitions for all relevant terms such as "annoy," "harass," "repeated communication," "alarm," or "torment," as these may be too vague or subjective, which may lead to an inordinate amount of prosecutorial discretion.

[141] *Id.* at 704.

Table 1. Cyberharassment Statutes

State	Citation	Penalty
Alabama	Ala. Code § 13A-11-8	Misdemeanor
Alaska	Alaska Stat. § 1161.120	Misdemeanor
Arizona	Ariz. Rev. Stat. § 13-2921	Misdemeanor
Arkansas	Ark. Code § 5-41-108	Misdemeanor
California	Cal. Penal Code §§ 422 and 653(m)	Misdemeanor
Colorado	Colo. Rev. Stat. § 18-9-111	Misdemeanor
Connecticut	Conn. Gen. Stat. § 53A-182-83	1st Degree: Felony; 2nd Degree: Misdemeanor
Delaware	Del. Code 11 § 1311	Misdemeanor
Florida	Fla. Stat. § 784.048	Misdemeanor or Felony
Georgia		
Hawaii	Hawaii Rev. Stat. § 711-1106	Misdemeanor
Idaho		
Illinois	Ill. Comp. Stat. 720 § 135 1-2	Misdemeanor
Indiana	Ind. Code § 35-45-2-2	Misdemeanor
Iowa	Iowa Code § 708.7	
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland	Md. Code § 3-3-805	Misdemeanor
Massachusetts	Mass. Gen. Laws § 265-43A	Felony
Michigan	Mich. Comp. Laws § 750.411s	Felony
Minnesota	Minn. Stat. § 609.749	Misdemeanor or Felony (if aggravated or repeated)
Mississippi	Miss. Code § 97-29-45	Misdemeanor
Missouri	V.A.M.S. § 565.090	Misdemeanor or Felony (if repeat offender or an adult over 21 against a minor 17 years or younger)
Montana	MCA § 45-8-213	Misdemeanor
Nebraska		
Nevada		
New Hampshire	N.H. Rev. Stat. § 644-4	Misdemeanor
New Jersey	N.J.S. § 2C 33-4	Misdemeanor
New Mexico		
New York	N.Y. Penal Law § 240.30	Misdemeanor

State	Citation	Penalty
North Carolina	N.C.G.S.A. § 14-196.3	Misdemeanor
North Dakota		
Ohio	Ohio Rev. Code § 2917.21A	Misdemeanor
Oklahoma	Okla. Stat. 21 § 1172	Misdemeanor
Oregon	Or. Rev. Stat. § 166.065	Misdemeanor
Pennsylvania	Pa. Cons. Stat. 18 § 5504	Misdemeanor
Rhode Island		
South Carolina	S.C. Code § 16-3-700(a)2	Misdemeanor
South Dakota	S.D. Cod. Laws § 49-31-31	Misdemeanor
Tennessee	Tenn. Code § 39-17-308	Misdemeanor
Texas	Tx. Penal Code § 42.07[a]	Misdemeanor
Utah	Utah code § 76-9-201	Misdemeanor
Vermont	13 V.S.A. § 1027	Misdemeanor
Virginia	Va. Code 18.2 § 152.7.1	Misdemeanor
Washington	Wash. Rev. Code § 9A.46.020	Misdemeanor
West Virginia	W. Va. Code § 61-3C-14A	Misdemeanor
Wisconsin	Wis. Stat. § 947.0125	Misdemeanor
Wyoming		

a. Provision ruled unconstitutional by Court of Appeals of Texas April 3, 2008, *Karenev v. Texas*, 2008 WL 902799.

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Table 2. Cyberstalking Statutes

State	Citation	Penalty
Alabama		
Alaska	Alaska Stat. § 11.41.260	Misdemeanor (Felony if victim under 16)
Arizona		
Arkansas		
California	Cal. Penal Code § 646.9	Misdemeanor
Colorado	Colo. Rev. Stat. § 18-9-111	Felony
Connecticut		
Delaware		
Florida	Fla. Stat. § 784.048	Misdemeanor or Felony
Georgia	Georgia Code § 16-5-90	Misdemeanor
Hawaii		
Idaho	I.C. § 18-7906	Misdemeanor (Felony if victim under 16)
Illinois	Ill. Comp. Stat. 720 § 5-12-7.5	Felony
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana	La. Rev. Stat. § 14-40.3	Misdemeanor
Maine		
Maryland		
Massachusetts	Mass. Gen. Laws § 265 43	Felony
Michigan	Mich. Comp. Laws § 750.411(h)	Misdemeanor (Felony if victim under 18 and Defendant is 5 years older)
Minnesota	Minn. Stat. § 609.749	Misdemeanor (Felony if aggravated or repeated)
Mississippi	Miss. Code § 97-45-15	Felony
Missouri	V.A.M.S. § 565.225	Misdemeanor (Felony if aggravated)
Montana	MCA § 45-5-220	Misdemeanor
Nebraska		
Nevada		
New Hampshire		
New Jersey	N.J.S. § 2C 12 10	
New Mexico		
New York		

State	Citation	Penalty
North Carolina	N.C.G.S.A. 14-§ 196.3	Misdemeanor
North Dakota		
Ohio	Ohio Rev. Code § 2903.211	Misdemeanor (Felony under some circumstances)
Oklahoma	Okla. Stat. 21-§ 1173	Misdemeanor
Oregon	Or. Rev. Stat. § 163.730-732	Misdemeanor
Pennsylvania	Pa. Cons. Stat. 18 § 5504	Misdemeanor
Rhode Island	R.I. Gen. Laws § 11-52-4.2	Misdemeanor (Felony on 2nd offense)
South Carolina	S.C. Code § 16-3-1700	Felony
South Dakota	S.D. Cod. Laws § 22-19A-1	Misdemeanor
Tennessee	T.C.A. § 39-17-315	Misdemeanor (Felony if victim under 18)
Texas		
Utah		
Vermont		
Virginia		
Washington	Wash. Rev. Code §§ 9A.46.110 and 9.61.260	Misdemeanor (Felony if threaten to kill)
West Virginia		
Wisconsin		
Wyoming	Wyo. Stat. § 6-2-506	Misdemeanor

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Table 3. Cyberharassment Statutory Language, by State

State	Citation	Selected Statutory Language
Alabama	Ala. Code § 13A-11-8(b)(1)	**Harassing Communications:** with intent to harass or alarm; communicates anonymously or otherwise by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.
Alaska	Alaska Stat. § 11.61.120	**Harassment in the 2nd Degree:** with intent to harass or annoy the other person: makes an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact.
Arizona	Ariz. Rev. Stat. § 13-2921	**Harassment:** with intent to harass or with knowledge that harassing the other person; anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses.
Arkansas	Ark. Code § 5-41-108	**Unlawful Computerized Communications:** with the purpose to frighten, intimidate, threaten, abuse, or harass another, the person sends a message: (1) by electronic mail or other computerized communication system, and in that message threatens to cause physical injury, to any person or damage to the property of any person; (2) by electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message threatens to cause physical injury to any person or damage to the property of any person; (3) to another person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd, or profane language; or (4) on an electronic mail or other computerized communication system with the reasonable expectation that the other person will receive the message and in that message uses any obscene, lewd, or profane language.
California	Cal. Penal Code § 422	Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety.
California	Cal. Penal Code § 653(m)	Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Every person who makes repeated telephone calls or makes repeated contact by means of an electronic communication device with intent to annoy another person at his or her residence is, whether or not conversation ensues from making the telephone call or electronic contact, guilty of a misdemeanor.
Colorado	Colo. Rev. Stat. § 18-9-111	**Harassment:** With intent to harass, initiates communication with a person, by telephone, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, or computer system that is obscene.

State	Citation	Selected Statutory Language
Connecticut	Conn. Gen. Stat. § 53A-182-83	A person is guilty of harassment in the first degree when, with the intent to harass, annoy, alarm or terrorize another person, he threatens to kill or physically injure that person or any other person, and communicates such threat by telephone, or by telegraph, mail, computer network, as defined in section 53a-250, or any other form of written communication, in a manner likely to cause annoyance or alarm and has been convicted of a previous felony. A person is guilty of harassment in the second degree when: (2) with intent to harass, annoy or alarm another person, he communicates with a person by telegraph or mail, by electronically transmitting a facsimile through connection with a telephone network, by computer network, as defined in section 53a-250, or by any other form of written communication, in a manner likely to cause annoyance or alarm.
Delaware	Del. Code 11 § 1311	A person is guilty of harassment when, with intent to harass, annoy or alarm another person: (2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm.
Florida	Fla. Stat. § 784.048	**"Cyberstalk"** means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. (2) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree; (3) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent, commits the offense of aggravated stalking, a felony of the third degree; (4) Any person who, after an injunction for protection against repeat violence, sexual violence, or dating violence , or an injunction for protection against domestic violence , or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree; (5) Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree.
Hawaii	Hawaii Rev. Stat. § 711-1106	A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person: repeatedly makes telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication; Repeatedly makes a communication anonymously or at an extremely inconvenient hour; repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

State	Citation	Selected Statutory Language
Illinois	Ill. Comp. Stat. 720 § 135 1-2	**Harassment through electronic communications** is the use of electronic communication for any of the following purposes: (1) Making any comment, request, suggestion or proposal which is obscene with an intent to offend; (2) Interrupting, with the intent to harass, the telephone service or the electronic communication service of any person; (3) Transmitting to any person, with the intent to harass and regardless of whether the communication is read in its entirety or at all, any file, document, or other communication which prevents that person from using his or her telephone service or electronic communications device; (3.1) Transmitting an electronic communication or knowingly inducing a person to transmit an electronic communication for the purpose of harassing another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment, if the defendant is at least 16 years of age at the time of the commission of the offense; (4) Threatening injury to the person or to the property of the person to whom an electronic communication is directed or to any of his or her family or household members; or (5) Knowingly permitting any electronic communications device to be used for any of the purposes mentioned in this subsection (a). "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photooptical system.
Indiana	Ind. Code § 35-45-2-2	A person who, with intent to harass, annoy, or alarm another person but with no intent of legitimate communication: uses a computer network (as defined in IC 35-43-2-3(a)) or other form of electronic communication to: (A) communicate with a person; or (B) transmit an obscene message or indecent or profane words to a person.
Iowa	Iowa Code § 708.7	A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following: Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
Maryland	Md. Code § 3-3-805	A person may not use electronic mail with the intent to harass: (1) one or more persons; or (2) by sending lewd, lascivious, or obscene material.
Massachusetts	Mass. Gen. Laws § 265-43A	Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, Internet communications or facsimile communications.
Michigan	Mich. Comp. Laws § 750.411s	A person shall not post a message through the use of any medium of communication, including the Internet or a computer, computer program, computer system, or computer network, or other electronic medium of communication, without the victim's consent, if all of the following apply: (a) The person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim; (b) Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested; (c) Conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested; (d) Conduct arising from posting the message causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
Minnesota	Minn. Stat. § 609.749	Harassment and stalking crimes. A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor: directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act; stalks, follows, monitors, or pursues another, whether in person or through technological or other means; repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, or other objects.

State	Citation	Selected Statutory Language
Mississippi	Miss. Code § 97-29-45	It shall be unlawful for any person: (a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication; (b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property; (c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;... (f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.
Missouri	V.A.M.S. § 565.090	A person commits the crime of harassment if he or she: Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication.
Montana	MCA § 45-8-213	A person commits the offense of violating privacy in communications if the person knowingly or purposely: (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend; (b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received.
New Hampshire	N.H. Rev. Stat. § 644-4	A person is guilty of a misdemeanor if such person: (d) Knowingly communicates any matter of a character tending to incite murder, assault, or arson; (e) With the purpose to annoy or alarm another, communicates any matter containing any threat to kidnap any person or to commit a violation of RSA 633:4; or a threat to the life or safety of another; or (f) With the purpose to annoy or alarm another, having been previously notified that the recipient does not desire further communication, communicates with such person, when the communication is not for a lawful purpose or constitutionally protected. "Communicates" means to impart a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer.
New Jersey	N.J.S. § 2C 33-4	A person commits a petty disorderly persons offense if, with purpose to harass another, he: Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
New York	N.Y. Penal Law § 240.30	**Aggravated harassment in the second degree:** A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she: (b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm.

State	Citation	Selected Statutory Language
North Carolina	N.C.G.S.A. § 14-196.3	It is unlawful for a person to: (1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person. (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person. (3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass. (4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.
Ohio	Ohio Code § 2917.21A	No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following: (1) Fails to identify the caller to the recipient and makes the telecommunication with purpose to harass or abuse any person at the premises, whether or not actual communication takes place between the caller and a recipient; (4) Knowingly states to the recipient that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises has the responsibility of protecting, or insures the property that will be destroyed or damaged; (5) Knowingly makes the telecommunication to the recipient, to another person at the premises, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises. No person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a device under the person's control, with purpose to abuse, threaten, or harass another person. "Telecommunication" means transmission over any communications system by any method, including, but not limited to electronic, digital, or analog.
Oklahoma	Okla. Stat. 21 § 1172	It shall be unlawful for a person who, by means of a electronic communication device, willfully either: 1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent; 2. Makes electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person; 3. Makes an electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death; 4. Makes electronic communication, whether or not conversation ensues, without disclosing the identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number; 5. Knowingly permits any electronic communication under the control of the person to be used for any purpose prohibited by this section; and 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person.
Oregon	Or. Rev. Stat. § 166.065	A person commits the crime of harassment if the person intentionally harasses or annoys another person by: (1) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm. (2) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.
Pennsylvania	Pa. Cons. Stat. 18 § 5504	**Harassment by communication or address:** A person commits the crime of harassment by communication or address when, with intent to harass, annoy or alarm another, the person: communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures; or communicates repeatedly in an anonymous manner; communicates repeatedly at extremely inconvenient hours; or communicates repeatedly in a manner not covered.

State	Citation	Selected Statutory Language
South Carolina	S.C. Code § 16-3-700(a)2	**"Harassment in the second degree"** means a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person and would cause a reasonable person in his position to suffer mental or emotional distress. Harassment in the second degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.
South Dakota	S.D. Cod. Laws § 49-31-31	It is a Class 1 misdemeanor for a person to use a telephone or other electronic communication device for any of the following purposes: (1) To contact another person with intent to terrorize, intimidate, threaten, harass or annoy such person by using obscene or lewd language or by suggesting a lewd or lascivious act; (2) To contact another person with intent to threaten to inflict physical harm or injury to any person or property; (3) To contact another person with intent to extort money or other things of value; (4) To contact another person with intent to disturb that person by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection; (5) For a person to knowingly permit a telephone or other electronic communication device under his or her control to be used for a purpose prohibited by this section.
Tennessee	Tenn. Code § 39-17-308	A person commits an offense who intentionally: Threatens, by telephone, in writing, or by electronic communication, including electronic mail or Internet services, to take action known to be unlawful against any person, and by this action knowingly annoys or alarms the recipient.
Texas	Tx. Penal Code § 42.07 (Provision ruled unconstitutional by Court of Appeals of Texas April 3, 2008, *Karenev v. Texas*, 2008 WL 902799.)	**Harassment:** A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he: (1) initiates communication by telephone, in writing, or by electronic communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene; (2) threatens, by telephone, in writing, or by electronic communication, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property ... ; (7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.
Utah	Utah code § 76-9-201	A person is guilty of electronic communication harassment if with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person: (a) makes repeated contact by means of electronic communications, whether or not a conversation ensues; or after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously contacts the electronic communication device of the recipient; or causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication; (b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response; (c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person.
Vermont	13 V.S.A. § 1027	Disturbing peace by use of telephone or other electronic communications: A person who, with intent to terrify, intimidate, threaten, harass or annoy, makes contact by means of a telephonic or other electronic communication with another and (i) makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; (ii) threatens to inflict injury or physical harm to the person or property of any person; or (iii) disturbs, or attempts to disturb, by repeated anonymous telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet or right of privacy of any person at the place where the communication or communications are received.

State	Citation	Selected Statutory Language
Virginia	Va. Code 18.2 § 152.7.1	**Harassment by computer:** If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he shall be guilty of a Class 1 misdemeanor.
Washington	Wash. Rev. Code § 9A.46.020	A person is guilty of harassment if: The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.
West Virginia	W. Va. Code § 61-3C-14A	**Obscene, anonymous, harassing and threatening communications by computer:** It is unlawful for any person, with the intent to harass or abuse another person, to use a computer to: (1) Make contact with another without disclosing his or her identity with the intent to harass or abuse; (2) Make contact with a person after being requested by the person to desist from contacting them; (3) Threaten to commit a crime against any person or property; or (4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.
Wisconsin	Wis. Stat. § 947.0125	A person is guilty of harassment when: (a) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on an electronic communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person or sends a message on an electronic communication system with the reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person. (c) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act or sends a message on an electronic communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act or sends a message to the person on an electronic communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity... (f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic communication system with the reasonable expectation that the person will receive the message.

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