

Cyberbullying from the
US Criminal Investigative Perspective

Expansion of the internet has resulted in the proliferation of socialisation and communication online. One side effect of this advancement has been the meteoric rise of cyberbullying. This post aims to define and explore the characteristics and ramifications of cyberbullying, as well as the difficulties in policing and prosecuting perpetrators from a US criminal investigative perspective.

Cyberbullying is the use of “email, text messages, social networking sites, and applications [by one or many participants to] harass, impersonate, stalk, or sext” (Ronis & Slaunwhite, 2019: 4) an unwilling victim. Patterns of abuse tend to mirror real-world statistics, as women, sexual minorities, and the previously victimised are most likely to be targeted (Takano & Yokotani, 2021; Weinstein, 2021; Zhang, 2020). The psychological effects of cyberbullying are often devastating. The invasive, scalable nature of online bullying (Hallmark, 2023) provides the victim with abuse that is nearly impossible to avoid or mitigate once begun.

As a result, social isolation, mental illness, and economic loss have been reported consequences of cyberbullying for both youth and adults (Castle, 2009; Weinstein, 2021). Tragically, it is also not uncommon for adolescents, who have not yet developed the emotional tools to work through the unique nature of online abuse, to commit suicide when targeted (Castle, 2009; Olaso-Coronel, 2020). This suggests that it is the scale of harm inflicted on the victim rather than the demographics involved which has made cyberbullying an “emerging public health issue” (CSN, 2016; CDC, 2023).

But because the US. has strict laws surrounding the citizen’s right to freedom of expression granted by the First Amendment (Weinstein, 2021), cyberbullying “generally rests in a legal void,

where few laws restrict the behavior of bad actors” (Castle, 2009: 580). The cultural sanctity of the First Amendment (Volokh, 2013) has essentially bound the Supreme Court from issuing a superlative judgment on cyberbully criminality, instead leaving it to the realm of states and lower courts to interpret.

This complicates the criminal investigative process, as police departments can be reluctant to investigate crimes unlikely to go to trial or result in a conviction (Bossler et al., 2022). Jurisdictional issues also arise if perpetrators are found to be across state lines. Identification of perpetrators require an IP address, which can only be provided by a user’s ISP if compelled by a warrant (Bossler et al., 2022). Additionally, if a VPN is used in tandem during an attack, then police would have to perform data triangulation, a sophisticated, time-intensive task (Graham, 2021; Li, 2021), to determine culpability.

Because no federal law yet exists, each state has its own laws concerning cyberbullying (Hallmark, 2023) which vary in their interpretation of ‘free expression’ and the severity of punishment. If a police investigation wished to identify the IP address of a suspect outside its own jurisdiction, it is unclear which jurisdiction’s laws take precedence. What could be an actionable offense in one state may not reach the minimum standard in another. These factors leave victims of cyberbullying with very little criminal recourse. As a result, cyberbullying cases tend to rely on intentional emotional distress torts (Garcia, 2016) for applicable prosecution. While this may allow some redress for victims, it has not yet proven to be a formidable deterrent to cyberbullying.

While a federal statute criminalising cyberbullying may not be possible, this should not preclude robust police inquiries into cyberbullying complaints. An inter-jurisdictional investigation framework for police departments could provide prosecutors and victims with more cases to take

to the lower courts for prosecution. If the volume of prosecuted cases were to noticeably increase, cyberbullying may no longer seem so alluring and actors could be deterred.

References

- Bossler, A. M., Holt, T. J., & Seigfried-Spellar, K. C. (2022) *Cybercrime and Digital Forensics: An Introduction*. 3rd ed. New York, USA: Routledge.
- Castle. S. (2009) Cyberbullying on Trial: The Computer Fraud and Abuse Act and United States v. Drew. *Journal of Law and Policy*, 17 (2): 579 – 608
- Center for Disease Control (2023) *Bullying – How Big is the Problem* | Violence Prevention. Centers for Disease Control and Prevention. [Available Online]
<https://www.cdc.gov/violenceprevention/youthviolence/bullyingresearch/fastfact.html>
- Children’s Safety Network (2016) Preventing Bullying: The Role of Public Health and Safety Professionals. [Available Online]
<https://www.childrenssafetynetwork.org/sites/default/files/Preventing%20Bullying%20-%20The%20Role%20of%20Public%20Health%20and%20Safety%20Professionals.pdf>
- Garcia, J. M. A. (2016) Intentional Infliction of Emotional Distress Torts as the Best Legal Option for Victims: When cyberbullying Conduct Falls Through the Cracks of the U.S. Criminal Law System. *Revista Juridica Universidad de Puerto Rico*, 85 (1): 127 – 168
- Graham, D. G. (2021) *Ethical Hacking: A Hands-On Introduction to Breaking In*. San Francisco, USA: No Starch Press.
- Hallmark, K. (2023) Death By Words: Do United States Statutes Hold Cyberbullies Liable for Their Victims’ Suicide? *Houston Law Review*, 60 (3): 727 – 756
- Li, V. (2021) *Bug Bounty Bootcamp: The Guide to Finding and Reporting Web Vulnerabilities*. San Francisco, USA: No Starch Press.
- Olaso-Coronel, S. M. (2020) Cyberbullying in the Context of Balancing Rights. *Philippine Law Journal*, 93 (2): 328 – 343
- Ronis, S. & Slaunwhite, A. (2019) Gender and Geographic Predictors of Cyberbullying Victimization, Perpetuation, and Coping Modalities Among Youth. *Canadian Journal of School Psychology*, 34 (1): 3 – 21
- Takano, K. & Yokotani, M. (2021) Social Contagion of Cyberbullying Via Online Perpetrator and Victim Networks. *Computers in Human Behavior*, 119: 1 – 12
- Volokh, E. (2013) One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and Cyberstalking. *Northwestern University Law Review*, 107 (2): 731 - 794
- Weinstein, J. (2021) The Federal Cyberstalking Statute, Content Discrimination, and the First Amendment. *UC David Law Review*, 54 (2): 2553 – 2604
- Zhang, E. (2020) The Inadequacies of Current Cyberbullying Remedies and Their Impact on LGBTQ+ Youth. *Tulane Journal of Law and Sexuality: A Review of Sexual Orientation and Gender Identity in the Law*, 29: 25 – 50