



STATE BAR OF MICHIGAN

Michigan IT Lawyer

A Publication of the State Bar of Michigan Information Technology Law Section

<http://www.michbar.org/it>

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Bits and Bytes from the Section

By Ronald S. Nixon, 2013-2014 IT Law Section Chairperson

Just yesterday the IT Law Section Council held its penultimate regular meeting of the fiscal year. (I always wanted to use “penultimate” in publication, so I just could not pass up this chance.) While the Council took care of a number of business matters, the focus of the meeting was working out some of the details of the **7th Annual Information Technology Law Seminar**, an event which many of you attend each year and one which we think many more of you would enjoy.

Some of the details have already been established. The seminar will be held in conjunction with the annual meetings of the section and council on **September 24, 2014 at the Inn at St. John’s in Plymouth**, where we have held it since the inaugural seminar six and half years ago. In addition to a full-day seminar, there will again be a continental breakfast buffet to start, a full luncheon during which the annual meetings will briefly be held, and a networking reception after the seminar with hors d’oeuvres and refreshments to accent the conversation.

In the next three weeks, a committee established by the council will meet a few times to establish the slate topics and speakers. Watch your email in June for announcements providing more details about the seminar. If you have any suggestions of speakers and topics you would like to see provided by the section, either at the seminar or even possibly at another section meeting, please send your suggestions to me. The council welcomes and uses them to bring you substantive content. Indeed, the suggestions provided by attendees at last year’s seminar are definitely being considered for the upcoming seminar.

The next (and last) regular Council meeting before the seminar is tentatively scheduled for Thursday, August 14, 2014. In addition to nailing down the final details about the seminar, one of the objectives for the August meeting will be to identify new candidates for council membership. Section members who want to become more involved with guiding the section’s activities are encouraged to attend. More details will follow in the July issue of the *Michigan IT Lawyer*.

Have a safe and happy summer. We certainly deserve it after this record-breaking winter!

Michigan IT Lawyer is published every other month. Previously published issues of the *Michigan IT Lawyer*, and its predecessor the *Michigan Computer Lawyer*, are available at <http://www.michbar.org/it/newsletters.cfm>. If you have an article you would like considered for publication, send a copy to:

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2013-2014

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Privacy Committee Information Technology Law Section

By Robert Rothman and Keith Cheresko
Privacy Committee Co-Chairs

The next meeting of the Privacy Law Committee will take place on Thursday, June 5, 2014 at 5:00 p.m. at the offices of
Jaffe, Raitt, Heuer & Weiss, P. C.
Suite 2500
27777 Franklin Road
Southfield, MI 48034-8214

The meeting will include a deep dive into the substance of the proposed EU (European Union) Data Protection Regulation and the related legislative process, as well as a discussion of recent privacy developments and legislative initiatives.

Attendance will be open to anyone interested!

If interested in joining the Privacy Committee, please send an email message to one of the Co-Chairs at the address listed below and express your interest in participating.

Bob Rothman, Co-Chair
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Privacy Law Committee

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kcheresko@privassoc.com
Privacy Law Committee



The *Michigan IT Lawyer* is pleased to present “Cyberbullying: What Can We Do?” by Melissa Chan, a winner of the 2013 Edward F. Langs Writing Award competition, and a Juris Doctor graduate of the University of Detroit Mercy School of Law.

The statements made and opinions expressed in this essay are strictly those of the author, and not the State Bar of Michigan or the Information Technology Law Section. Comments regarding this article can be forwarded to the *Michigan IT Lawyer*, care of michael@gallo.us.com. Enjoy!

Cyberbullying: What Can We Do?

Current problems punishing cyberbullying committed against children and an examination of legislation that can help address cyberbullying

By Melssia Chan

Ryan Halligan was a 14-year-old boy from Vermont who had suffered from some developmental delays that affected his speech and physical coordination.¹ His disorder made him a target of bullying.² Ryan then befriended someone who used to bully him.³ However, his friend started spreading rumors that Ryan was gay.⁴ During the summer of 2003, Ryan received instant messages from other classmates, teasing him for being gay, based on these rumors.⁵ He also had online conversations with a popular girl that he liked.⁶ However, when Ryan confronted her, she told him that she had only pretended to like him.⁷ She then posted their private conversations for other classmates to view.⁸ In October 2003, Ryan committed suicide.⁹

Unfortunately, Ryan’s story is only one of thousands of nameless and faceless teenagers who are bullied; some to death like Ryan. With the emergence of social networking sites and the increasing integration of technology in our everyday lives comes a greater prevalence of cyberbullying. State legislators and education boards need to be vigilant in creating legislation and policies that effectively address and prevent bullying of all forms.

Cyberbullying - Overview

What Is Cyberbullying?

Cyberbullying can be defined as “willful and repeated harm caused by humiliating, embarrassing, or bullying through some electronic form of communication, including text messages, social networking websites, e-mails, instant messaging, and chat rooms.”¹⁰ With the increasing integration and use of technology in our everyday lives, 52% of teenagers reported experiencing cyberbullying, in

contrast with 37% of students who reported being bullied at school.¹¹ This article will focus on two types of cyberbullying that involves youths: kids against other kids and adults against kids or other adults. For purposes of this article, adults can also refer to teenagers or youth over the age of 18.



Melissa Chan

Why Is Cyberbullying A Problem?

Traditional bullying has always existed. However, characteristics inherent to cyberbullying may arguably make it more harmful than traditional bullying. First, information can become quickly disseminated and accessible to a wide audience.¹² Harmful information or pictures can also be difficult to delete once they are posted or sent.¹³ Furthermore, information can be posted anonymously. As a result, it is sometimes difficult to trace the source and discipline perpetrators accordingly.¹⁴ Second, while traditional bullying is generally confined within classroom hours, cyberbullying can affect children at all times of the day and week, including summer months. The perpetual nature of cyberbullying can cause children to perceive the bullying as inescapable, which can have debilitating and devastating consequences.¹⁵ A 2010 study by the Cyberbullying Research Center also found that cyberbullying victims were almost twice as likely to experience suicidal thoughts compared to children who had not been cyberbullied.¹⁶ Measures that specifically target cyberbullying should therefore, be taken.

Problems Disciplining Kids Who Bully and Criminally Penalizing Adults Who Bully

First Amendment Claims By Kids Who Bully and Ability of the Education System to Punish

Schools are in a unique position to directly become aware of incidents of cyberbullying and discipline perpetrators of cyberbullying. They also have the ability to educate students about bullying and cyberethics.¹⁷ A school's ability to discipline bullies should not be impeded. However, students who have been punished by teachers and school officials for bullying have attempted to argue that such punishment violated their First Amendment rights of free speech. First Amendment issues are particularly relevant to cyberbullying because most online behavior occurs at home. Therefore, one of the main questions is whether schools have the right to punish students for online behavior that does not physically occur on school grounds.

While the majority of cases have ruled that schools may punish students given the presence of certain conditions, the threat of such suits could impact the ability or willingness of the education system to properly punish students who bully other students. Nevertheless, courts have generally found that schools have the authority to punish students if the students' conduct disrupts or interferes with the operation of the school or the school environment. Courts have also found that students' First Amendment rights are limited, or at least not equivalent to adults, within a school environment.

The Supreme Court, in *Tinker v. Des Moines*, addressed the First Amendment limits on school officials' ability to discipline students. It ruled that school officials have the authority to discipline students if the students' conduct could foreseeably cause or has caused disturbances to the school environment. In *Tinker*, a school had learned that a group of adults and students were planning to wear black armbands to publicize their opposition against the conflicts occurring at that time during the Vietnam War and in support of a truce.¹⁸ The school then adopted a policy prohibiting the wearing of armbands to school, and any student who refused to remove them would be suspended.¹⁹ Nevertheless, two students wore armbands to school and were suspended accordingly.²⁰ The students then filed a suit against the school for an injunction preventing the school from disciplining them.²¹ The trial court ruled that the school's actions were constitutional because it was reasonable that the armbands would cause a disturbance in the school environment.²² While the Supreme Court reversed the trial court decision, it upheld the general rule articulated by the trial court.²³

Schools, according to the Supreme Court, have the authority to punish students for conduct that could interfere, "materially or substantially with the requirements of appropriate discipline in the operation of the school."²⁴ However, the Supreme Court reversed because there were no facts that "might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred." The *Tinker* Court also stated that it was reluctant to uphold the constitutionality of school policies that could stifle any type of political opposition by students in the absence of disturbance to the school environment.²⁵ While the Supreme Court did not uphold the constitutionality of the school's actions in this case, it articulated general rules that have been extended and elaborated upon by many subsequent courts.

The Court of Appeals in the Fourth Circuit extended the reasoning of the *Tinker* court in *Kowalski v. Berkeley County Schools*, a case dealing directly with cyberbullying.²⁶ The key ruling in this case is that even online behavior occurring outside campus could be subject to school discipline if that behavior could be reasonably foreseen to impact and disrupt the school environment. When Kowalski was a Twelfth Grade student attending a high school located in the Berkeley County school district, she created a MySpace page called "S.A.S.H." – an acronym for "Students Against Shay's Herpes" – that was intended to ridicule a particular fellow student, Shay N.²⁷ MySpace is a social networking site that allows members to create profiles and interact with other members.²⁸ She created the page using her home computer, after school hours.²⁹ Upon creating the page, she invited about 100 of her friends to join her MySpace page, many of whom were also students at the school.³⁰ Approximately two-dozen fellow students joined the group and many posted comments ridiculing Shay on the page.³¹ When the principal learned about the page, Kowalski was suspended, banned from attending school events and removed from the cheerleading squad for the remainder of the school year.³² Kowalski then filed a suit against the school district claiming a violation of her First Amendment rights to free speech and Fourteenth Amendment right of due process.³³ The trial court ruled against Kowalski's free speech claim and granted summary judgment for the Defendants, stating that they were authorized to punish Kowalski for her vulgar speech and for her encouragement of students to follow suit.³⁴

The Court of Appeals affirmed the trial court decision. Upon appeal, Kowalski had argued that the online behavior at issue occurred off-campus and therefore, school

educators did not have the authority to discipline her.³⁵ The Fourth Circuit rejected this argument by relying on the *Tinker* ruling, stating that schools had the authority to punish students if the students' conduct fell within the schools' legitimate interest in preventing disruption and interference in the school environment.³⁶ The court ultimately ruled that Kowalski's actions caused disruption and interference to the school environment in a way that made her immune to First Amendment protection because Kowalski should have reasonably foreseen that her actions would impact the school environment.³⁷ The disruption was apparent given that she had invited many fellow students at the school to the page and a majority of the group consisted of fellow students.³⁸ The court also noted that the demeaning, vulgar and offensive remarks directed at a fellow student through the MySpace page created disorder at the school.³⁹ Finally, the court ended the opinion by reprimanding Kowalski's action in filing a suit against the school, recognizing the problems of bullying in schools and condoning the school for taking such problems seriously.⁴⁰ Therefore, according to this court, even online behavior that does not physically occur on-campus can be subject to discipline by the school if the students' behavior could be reasonably foreseen to impact the school, such as the involvement of other schoolmates.

Other circuit courts have agreed with the Fourth Circuit's approach. For example, in *S.J.W. ex. rel. Wilson v. Lee's Summit R7 School District*, the Court of Appeals in the Eighth Circuit ruled that racist and offensive messages targeting other fellow students that were posted on a website could be reasonably foreseen to impact or disrupt the school environment.⁴¹ This court also found that the physical location of the offending student when the messages were posted was not as important as the fact that the posts were targeting students attending the Defendant's school.⁴² The *Tinker* ruling was also extended by the Court of Appeals in the Second Circuit in the *Doninger* case that involved a student who filed a suit against her school for disciplining her when she posted a message off-campus that contained misleading information about the school's cancellation of a school event.⁴³ This court found that the content of the message was intentional and could be reasonably foreseen to impact and disrupt the school.⁴⁴ Among the cases reviewed, the only instance that a court did not find that online behavior with offensive speech that substantially disrupted the school, was in *J.S. v. Blue Mountain School District*.⁴⁵ In this case, a student had created an offensive website about the principal that did not substantially disrupt the school and therefore, the school was not authorized to discipline her.⁴⁶ In this case, the Court of Appeals in the Third

Circuit made this conclusion based on the steps the students had taken to make the website "private", that the name of the principal and the location of the school were not mentioned, and its perception that the profile was so "outrageous that no one could have taken it seriously."⁴⁷ While this court ruled in the student's favor, the ruling turned on facts specific to the case. Otherwise, in applying the court rulings of the majority of cases reviewed, most courts are likely to find that schools have the authority to discipline the offending students for speech that falls within the basic definition of cyberbullying and involved other students.

Recently, the Court indicated that it would necessarily require school disruption or interference as a condition for school officials to appropriately discipline students. The Supreme Court, in *Morse v. Frederick*, found that schools could discipline students for engaging in speech that could be viewed as a legitimate school interest.⁴⁸ It held that the school authorities did not violate students' First Amendment rights when they appropriately seized a banner that could be interpreted as promoting illegal drug use that was being waved at an off-campus, school sponsored event.⁴⁹ The Court found that discouraging the promotion of illegal drug use was a legitimate school interest that school officials had the authority to discipline without violating the students' First Amendment rights.⁵⁰

In so ruling, this Court extended the ruling of *Bethel School Dist. No. 403 v. Fraser*, another Supreme Court case, which had held that "vulgar or lewd" speech was within the scope of the school's authority to discipline.⁵¹ In *Fraser*, the court found that it was within the school's discretion to decide whether students' speech was inappropriate.⁵² In this case, the court also found that the school had a legitimate interest in punishing Fraser for the explicit sexual innuendo that was conveyed at a school assembly, as there were children in the audience.⁵³ While the school's authority to discipline student speech is certainly not limitless, there has been recognition by some courts that the school has relatively broad discretion in deciding what types of behavior warrant disciplinary action.

Cyberbullying will most likely be viewed as behavior that is within the education system's authority to punish. Many of the cyberbullying cases involving youth that have received a great deal of media attention involve a nexus to the school that allows school officials and teachers to punish the offending students appropriately. While there is a general consensus in the courts that cases that involve bullying between students are within the school's authority to punish, the hope is that these First Amendment suits will not dissuade schools from properly disciplining students who bully.

Inadequate Remedies For Criminally Prosecuting Adults

Because few states have enacted laws criminalizing cyberbullying, there are a limited number of avenues for redress available to parents of bullied children. The possible causes of action are also highly dependent on the specific facts of the case. Causes of action include commission of hate crimes, stalking and invasion of privacy. Some states have also enacted cyberstalking statutes.⁵⁴ Another possible course for redress is prosecution under the Computer Fraud and Abuse Act (CFAA). Among the cases reviewed, there is only one case, *U.S. v. Drew*, in which the State attempted to prosecute an adult bully under the CFAA. However, the State was unsuccessful in doing so.

The CFAA is a federal criminal statute enacted in 1984 that was intended to prosecute computer hackers.⁵⁵ The statute, in the section most pertinent to cyberbullying, criminally prosecutes individuals who “knowingly” or “intentionally” “accesses a computer without authorization or exceeds authorization” and “obtains information from any protected computer if the conduct involved an interstate or foreign communication.”⁵⁶ Courts have employed both narrow and broad approaches towards statutory interpretation. Some courts have applied agency law and ruled that an employee can lose his or her permission to access information through misuse.⁵⁷ Other courts, however, have found that anyone who exceeds his or her authorized access can be found in violation of the CFAA.⁵⁸

In *U.S. v. Drew*, the California district court acquitted Drew of charges brought against her under the CFAA statute arising from cyberbullying using a MySpace account.⁵⁹ In and around September 2006, Drew had entered into a conspiracy with other individuals to find out what 13-year-old Megan Meier, a neighbor, had been saying about Sarah, Drew’s daughter.⁶⁰ Drew and the other conspirators created a MySpace profile of a fictitious 16-year-old boy named “Josh Evans”, posted a picture of an attractive young male without his consent and contacted Megan through her MySpace profile.⁶¹ Under this fake account, Drew sent flirtatious messages to Megan.⁶² About a week later, Megan received messages from “Josh” saying that he was moving away, no longer liked her, and that the “world would be a better place without her.”⁶³ On the same day, Megan killed herself.⁶⁴ Upon learning about Megan’s suicide, Drew deleted the fake “Josh” account.⁶⁵

The government based its charges on violations of the MySpace.com Terms of Use Agreement to which each register of a profile agrees.⁶⁶ The court found that Drew had exceeded her authorized access in violation of the

CFAA.⁶⁷ Under the MySpace terms of service, users shall not knowingly provide false or misleading information or use their account to harass another person.⁶⁸ Although the CFAA does not define “interstate or foreign communication”, the court found that the use of a computer with a web-based application and the Internet itself was sufficient to satisfy the requirement of interstate communication.⁶⁹ Furthermore, the court chose to employ a broad approach towards the authorization requirements. It first determined that the owner of a website, like MySpace, had the right to set out and impose terms and conditions of use upon its users.⁷⁰ Because Drew had violated the MySpace terms of services, the court found that she had exceeded her authorized access under the CFAA.⁷¹

However, the court ultimately granted Drew’s motion for acquittal on void for vagueness grounds, which helps ensure that criminal statutes have fair warnings.⁷² There are two prongs to this doctrine.⁷³ First, there is a notice sufficiency requirement.⁷⁴ Second, and more importantly, there must be guideline setting limit to govern law enforcement.⁷⁵ To comply with this second requirement, the statute must provide relatively clear guidelines to prevent standardless, sweeping enforcement.⁷⁶ This court found that a misdemeanor violation of the CFAA based on Drew’s violation of a website’s terms of services was overly broad and unacceptably vague.⁷⁷ The court also expressed concern that by criminalizing any violation of a website’s terms and conditions, the website’s owner could ultimately define the criminal conduct rather than the statute.⁷⁸ Under this broad application, even Megan’s conduct would be considered a criminal violation of the statute as she violated the MySpace requirement that the user be 14 years of age.⁷⁹ Therefore, the court concluded that it was forced to grant Drew motion for acquittal.⁸⁰

Given that many recent cyberbullying cases involve social networking sites, such as MySpace and Facebook, the CFAA may not be an appropriate avenue to prosecute cyberbullying based on rulings in *Drew* and the reasoning behind its conclusions. While there are other criminal charges that can be brought, such charges are often fact specific. Examples of other possible criminal charges include hate crimes, invasion of privacy, and cyberstalking. A recent case in which charges of hate crime and invasion of privacy were brought involved Tyler Clementi, a Rutgers freshman. Tyler was an 18 year old who had recently told his family and friends that he was gay.⁸¹ His roommate secretly set up a webcam to spy on him engaging in an intimate act with another man, who then used Twitter, a social networking site, to tell his followers about what Tyler was doing.⁸²

Several days later, Tyler committed suicide by jumping off the George Washington Bridge.⁸³ Tyler's roommate, Dharun Ravi, was charged with multiple crimes, including invasion of privacy and hate crime.⁸⁴ The hate crime charge was brought because there was some evidence that Ravi may have targeted Tyler because of his sexuality.⁸⁵ However, Ravi was not charged in Tyler's death.⁸⁶

While the criminal charges discussed above can be brought against legal adults, such charges do not necessarily address the problems surrounding the use of websites and other electronic devices as a means to bully or harm others, particularly children and youth.

What Can We Do? How We Can Address Cyberbullying in the Classrooms and Criminally Through Legislation

Addressing Bullying In Schools

While it is by no means an ultimate solution, legislation is a means to address and hopefully prevent bullying and cyberbullying in schools. As illustrated above, courts have generally ruled that schools have the authority to discipline bullies. Since 1999, states have enacted legislation that forces schools to address and discipline bullying. Steps are also being taken by the federal government to address these issues. In August of 2010, the U.S. Department of Education held its first bullying prevention summit and ever since, has continued to host one annually.⁸⁷ However, there are questions over the efficacy of current anti-bullying law that warrants exploration of other possible solutions or means of improvement.

Bullying Prevention Programs or Policies

As of January 2012, 48 states have enacted some form of bullying prevention programs or policies.⁸⁸ Michigan recently passed an anti-bullying statute in 2011.⁸⁹ Out of those 48 states, 38 of them have enacted statutes to directly address cyberbullying.⁹⁰ With regards to cyberbullying, 34 states more or less define cyberbullying as similar to bullying and only 6 states specifically define cyberbullying separately.⁹¹ Most of the anti-bullying laws require schools to address and prevent bullying.⁹² These laws set basic minimal requirements that school policies must contain to address and prevent bullying.⁹³ The Michigan statute, for example, requires that school boards "adopt and implement a policy prohibiting bullying at school" that must, among other requirements, include designation of school officials

to ensure implementation and a procedure of notification for parents of a victim or perpetrator.⁹⁴ Schools are encouraged to include initiatives to form educational programs for students and parents about bullying as well as annual training for teachers and school officials on "preventing, identifying, responding to, and reporting incidences of bullying."⁹⁵ Vermont has a similar statute, but requires that educators undergo annual training and perpetrators be disciplined.⁹⁶ Some states, like Connecticut, have statutes that are much less stringent by only "allowing" that such policies be enacted, rather than making them a requirement.⁹⁷

Examples of states that have enacted statutes that directly address cyberbullying are New Hampshire, Louisiana, Arkansas and Oregon.⁹⁸ While some of these statutes criminalize cyberbullying committed by adults against minors,⁹⁹ the majority of the cyberbullying laws reviewed addresses cyberbullying in a similar manner as those statutes intended to address bullying in general. For example, Connecticut has a cyberbullying statute that almost mirrors its bullying statute.¹⁰⁰ Moreover, three states have also enacted statutes that criminalize cyberbullying committed by those under 18.¹⁰¹

How Effective Are The Anti-Bullying Statutes?

While anti-bullying statutes are well intentioned, there are doubts over their effectiveness in actually curbing and preventing incidences of bullying.¹⁰² Part of the problem with the majority of anti-bullying statutes is that the language is overly vague and broad. As a result, there is little specific direction on how to implement the policies once schools enact them.¹⁰³ There have also been studies reporting that the number of incidences of bullying before and after the enactment of anti-bullying laws remained largely unchanged.¹⁰⁴ For example, a 2008 study performed by Washington State University showed that overall incidence rates of bullying in schools have not decreased since the enactment of the state's anti-bullying statute in 2002.¹⁰⁵ Results from this study is particularly disconcerting given that the Washington anti-bullying statute is more comprehensive than the majority of the statutes reviewed as it specifies procedures required for implementation.¹⁰⁶ Only fourteen states require a provision of counseling or other support services.¹⁰⁷ Furthermore, school officials may underreport incidences of bullying due to the First Amendment suits that have been brought by students who have been disciplined.

Other Possible Solutions To Address Cyberbullying And Bullying

If there are unanswered questions over the efficacy of these anti-bullying statutes, what are other measures that can be taken? Criminalizing cyberbullying is a growing trend in state legislation.¹⁰⁸ Only three states have criminalized cyberbullying amongst students and other youth.¹⁰⁹ Louisiana's cyberbullying statute, for example, provides that any minor found to have engaged in cyberbullying would be subject to the state's Children Code where juvenile correctional services may be provided.¹¹⁰ There have also been two unsuccessful attempts to enact a federal law imposing criminal penalties on cyberbullying, called the Megan Meier Cyberbullying Prevention Act.¹¹¹

There has also been discussion over increased measures to make teachers and school officials criminally liable for failing to address bullying in schools given the apparent ineffectiveness of anti-bullying statutes.¹¹² Some believe that requiring stricter penalties for failures by school officials to properly address bullying and take proactive steps to protect victims is necessary to incentivize these educators to do so.¹¹³ While there have been some cases that have made school administrators liable for negligence, absent gross negligence, school administrators are unlikely to be held liable for failing to address bullying.¹¹⁴ For example, parents of victims who have turned to federal law, most notably the 42 U.S.C. § 1983, which imposes criminal liability against state officers but requires that there be a "special relationship" that only arises when the child is in danger and the official actually undertakes to protect that child.¹¹⁵ Because such a relationship is difficult to prove, school officials and educators will most likely not be found liable for failure to address bullying, especially cyberbullying.¹¹⁶

While educators should be held to their responsibilities of properly addressing and preventing bullying, legislators need to keep a balance between protecting educators and holding them accountable for actual failures to protect. Teachers play an important role in society and should not be dissuaded from entering the profession due to threats of criminal penalties.¹¹⁷ Moreover, it is difficult to define the types of failures and negligence that would warrant criminal penalties.

Another solution is to improve current anti-bullying laws to incorporate specific measures and procedures that have shown to effectively combat bullying.¹¹⁸ Funding studies that examines the efficacy of anti-bullying programs will also help legislators determine the types of measures that should be required. For example, a report by the Michigan Policy Network that examined results from various studies found that an efficacious program includes the education and

instruction of teachers, education of peers about bullying and of a definition of bullying.¹¹⁹ It was noted that the education of peers is particularly effective as most students are passive bystanders or observers who can report incidences of bullying, including cyberbullying.¹²⁰ While some state statutes currently incorporate all of these measures, many statutes do not. Further studies should then examine the efficacy of such programs. If more of these measures are incorporated into anti-bullying statutes, perhaps there will be more pronounced decreases in incidence rates of bullying.

Criminalizing Cyberbullying For Acts Committed By Adults Against Children

While a majority of states have enacted anti-bullying laws that force schools to enact policies addressing bullying, much fewer states have criminalized cyberbullying. As previously stated, there are many possible charges that can be brought for cyberbullying and the types of charges are case-specific. But as seen with the failure to impose criminal penalties for Lori Drew's behavior in *U.S. v. Drew*, existing remedies may not effectively punish cyberbullying.

There are currently only nine states that have enacted statutes criminalizing cyberbullying.¹²¹ For example, Massachusetts imposes a maximum sentence of two and a half years imprisonment for harassment, which includes "conduct...transmitted in whole or in part by... electronic mail, Internet communications, instant messages or facsimile communications."¹²² More states could follow Massachusetts's model and specifically include cyberbullying in preexisting harassment statutes. By doing so, parents of bullied victims could have another avenue for redress that may have greater propensities for success than other criminal and civil charges.

Conclusion

There is no single solution to cyberbullying. Bullying and cyberbullying are complex issues with a multitude of underlying factors that need to be addressed. The increased prevalence of cyberbullying only adds levels of complexities and dangers to existing problems. Combating these issues requires an integrative approach and cooperation from all members of a community including, legislators, school officials, teachers, parents and students. Legislators and school boards need to take proactive measures in drafting and implementing programs that effectively address and prevent bullying. Studies also need to be funded in order to research the efficacy of these programs. All members of a community need to recognize that, even absent suicide,

bullying of all forms can have pervasive, debilitating and long-lasting effects on a child. It should not take any more suicides before further proactive measures are taken that truly address bullying. ■

Endnotes

1 John Halligan, *Ryan’s Story*, RYAN STORY PRESENTATION (April 29, 2013, 10:01 PM), <http://www.ryanpatrickhalligan.org/index.htm>.

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 Scott Farbish, *Sending the Principal to the Warden’s Office: Holding School Officials Criminally Liable For Failing to Report Bullying*, 18 *Cardozo J.L. & Gender* 109, 113 (2011).

11 Bureau of Justice Statistics, US Department of Health and Human Services, Cyberbullying Research Center, 2012, (March 2, 9:15 PM), <http://www.statisticbrain.com/cyberbullying-statistics/>.

12 *Why Cyberbullying Is Different*, STOP CYBERBULLYING NOW (March 2, 2013, 9:13 PM), <http://www.stopbullying.gov/cyberbullying/what-is-it/index.html#whycyberbullying>.

13 *Id.*

14 *Id.*

15 Kyra Kester and Candiya Mann, *Bullying in Washington Schools: Update 2008*, Social and Economic Sciences Research Center, p. 15 (2008).

16 Sameer Hinduja, *Cyberbullying Research Summary: Cyberbullying and Suicide*, CYBERBULLYING RESEARCH CENTER (2010).

17 *What’s the School’s Role in This?*, STOP CYBERBULLYING (March 2, 2013, 8:46 PM), http://www.stopcyberbullying.org/prevention/schools_role.html.

18 *Tinker v. Des Moines Independent Community School District*, 89 S.Ct 733, 735 (1969).

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

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2014 Edward F. Langs Writing Award

Essay Competition Rules

1. Awards will be given to up to six student essays, which in the opinion of the judges make the most significant contribution to the knowledge and understanding of information technology law. Factors to be taken into consideration include: originality; timeliness of the subject; depth of research; accuracy; readability; and the potential for impact on the law.
2. Essay must be original, deemed to be of publishing quality, and must not have been submitted to any other contest within the previous 12 months.
3. Essay must be typed, double spaced, at least ten pages in length, must contain proper citations listed as either endnotes or footnotes, and must have left, right, top, and bottom margins of one inch.
4. Essay must include the submitter's name, email address, mailing address, telephone number, and school attended.
5. A total of up to \$3,000 in US dollars shall be divided between the award winning essays, and all rights to award winning essays shall become the property of the State Bar of Michigan.
6. The Information Technology Section of the State Bar of Michigan reserves the right to make editorial changes, and to publish award winning essays in the Section's newsletter, the *Michigan IT Lawyer*. (Previous issues of the *Michigan IT Lawyer* can be accessed at <http://www.michbar.org/it/newsletters.cfm>.)
7. Essay must be submitted as a Microsoft Word document, postmarked by **June 30, 2014**, and emailed to dsyrowik@brookskushman.com. ■



Information Technology Law Section, State Bar of Michigan Mission Statement

The purposes of the Section are to review, comment upon, and appraise members of the State Bar of Michigan and others of developments in the law relating to information technology, including:

- (a.) the protection of intellectual and other proprietary rights;
- (b.) sale, leasing, distribution, provision, and use of, hardware, software, services, and technology, including computer and data processing equipment, computer software and services, games and gaming, information processing, programming, and computer networks;
- (c.) electronic commerce
- (d.) electronic implementation of governmental and other non-commercial functions;
- (e.) the Internet and other networks; and
- (f.) associated contract and tort liabilities, and related civil and criminal legal consequences.

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