Cyberbullying at School: Good Practice and Legal Aspects in the United Kingdom

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Cyberbullying at school has emerged as a new, electronic form of bullying and harassment and is recognised as a growing problem all over the world. The ability to use cyberspace to bully others means that harassment, rumours and intimidation can reach a much wider audience. Although research has not as yet explored fully the consequences of either cyber-victimisation or cyberbullying, it would appear that they may be detrimental to the health of young people, suggesting the need for policies and interventions, which some European countries (e.g., Germany, Luxemburg, Belgium and the United Kingdom) have attempted to undertake. Currently, however, only the United States has implemented specific laws that treat cyberbullying as a criminal offence per se. After briefly considering the literature on cyberbullying this article will focus on the legal, regulatory and good practice frameworks for controlling cyberbullying in UK educational contexts.

■ **KEYWORDS**: traditional bullying, cyberbullying, online harassment, law

Cyberbullying is defined as 'an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him- or herself' (Smith et al., 2008, p. 376). To date, cyberbullying has received significant media attention as certain cases have resulted in civil and criminal law suits filed against a perpetrator and/ or a school. Currently in the United Kingdom there is no specific law against cyberbullying per se; however, a number of other civil and criminal laws may be applied to a cyberbullying context. This article thus highlights the legal aspects of the issue of cyberbullying relevant to the United Kingdom, and discusses potential problems with such an approach. It also discusses current good practices to prevent cyberbullying.

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Cyberbullying as a New Form of Bullying

The phenomenon of cyberbullying has emerged more recently with the increasing use of computers and mobile phone usage by young people (Ybarra & Mitchell, 2004a, 2004b; Patchin & Hinduja, 2006; Smith et al., 2008; Sourander, et al., 2010). However, like many emerging areas there is currently a lack of agreement on the definition and the behaviours underlying it (Rivers & Noret, 2010). Research suggests that a number of factors unique to the online environment may promote bullying behaviour (Ybarra & Mitchell, 2004a, 2004b; Patchin & Hinduja, 2006; Slonje & Smith, 2008), with anonymity often being identified as the main factor. Anonymity allows the perpetrator to become 'invisible', reducing the risk of being caught (Patchin & Hinduja, 2006) and creates an environment that makes it more difficult to be aware of the impact of one's actions on the victim (Slonje & Smith, 2008; Ybarra & Mitchell, 2004a, 2004b). Moreover, it has been found that the cyber-bully is more skilled than their victim in using technology and that the victim can be faced with the offending behaviour at any time anywhere in the world (Ybarra & Mitchell, 2004a, 2004b; Patchin & Hinduja, 2006; Slonje & Smith, 2008).

Internet surveys of youths in the United States have shown prevalence rates of 12% being aggressive to someone online, 4% being targets of aggression and 3% being both aggressors and targets (Ybarra & Mitchell, 2004a). Raskauskas and Stoltz (2007) surveyed students in the United States aged 13–18 years, of whom 49% were cyber-victims and 21% were cyberbullies. Many cyber-victims were also traditional victims, and most cyberbullies were also traditional bullies. Among surveys in other countries, 14% of an Australian sample (Campbell, 2005), 25% of a Canadian sample (Li, 2006) and 12% of a Swedish sample (Slonje & Smith, 2008) reported being a target of cyberbullying.

Cyberbullying research in the United Kingdom has recently been described as being 'at an early stage' (Smith et al., 2008, p. 376). In the United Kingdom, studies of school-aged children have reported victimisation rates of: 4% for nasty text messages and 2% for nasty email messages (Oliver & Candappa, 2003); 14% by text message, 5% through chat rooms, and 4% by email (NCH, 2005). Rivers and Noret (2010) surveyed 11,000 English pupils from 2002 to 2005; nearly 6% said they had received nasty or threatening text messages or emails 'once in a while' or more in 2002 and 2003, but this rose to 7% or more in 2004 and 2005.

Although research has not as yet fully explored the consequences of cyberbullying, it would appear that these may be detrimental to the health of young people (Raskauskas & Stoltz, 2007). Emerging research has indicated cyberbullying is associated with a number of psychiatric and psychosomatic problems, including perceived difficulties, emotional and peer problems, headache, recurrent abdominal pain, sleeping difficulties, not feeling safe at school, hyperactivity, low prosocial behaviour, frequent smoking, drunkenness (Sourander et al., 2010) and conduct problems (Gradinger, Strohmeier & Spiel, 2009). Adjustment problems of cyber-bullies, cyber-victims and cyber-bully/victims have also been reported in a number of studies (Gradinger et al., 2009; Juvonen & Gross, 2008; Kowalski et al., 2008; Raskauskas & Stoltz, 2007; Ybarra & Mitchell, 2004a, 2004b). As is evident from

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these consequences, new interventions, as well as drawing upon past experiences and knowledge of traditional bullying, are required. The use of legal frameworks to address cyberbullying, however, is but one way of approaching this new form of bullying behaviour.

Interventions Against Cyberbullying

As cyberbullying is a relatively new phenomenon there is still little known about the causes and outcomes of the behaviour. This lack of knowledge makes it difficult to develop appropriate interventions aimed at this behaviour (Dooley, Pyzalski, & Cross, 2009). To date, however, it has been recognised that one of the best ways to deal with cyberbullying is to prevent it happening in the first place (Byron, 2008; Erwin-Jones, 2008). Although there is no single solution to the problem of cyberbullying, the following five key areas have been suggested (Byron, 2008; Erwin-Jones, 2008), which schools need to address together to put in place a comprehensive and effective prevention plan. These draw upon intervention approaches previously used for traditional bullying, such as whole school approaches and individual skills approaches, but take into account, the technological environment:

1. Understanding and talking about cyberbullying: the whole school community needs to be aware of the impact of cyberbullying and the ways in which it differs from other forms of bullying. Young people and their parents should be made aware of pupils' responsibilities in their use of ICT, and what the sanctions are for misuse.

2. Updating existing policies and practices: review and update the school's anti-bullying policy plus other relevant policies — for example, policies on behaviour, pastoral care and e-learning strategies. Schools should keep good records of any incidents of cyberbullying and be able to conduct searches of internet use records at school. Knowing that the school is taking such steps may act as a disincentive for bullies to misuse school equipment and systems.

3. Making reporting of cyberbullying easier: schools should provide and publicise different ways of reporting cyberbullying, such as a student council taskforce, peer reporting, anonymous reporting, and provide information about contacting service providers directly.

4. Promoting the positive use of technology: it should be used to support engaging, positive and effective learning, and to realise and increase the potential of personalised learning by making learning more flexible, creative and accessible. Schools should promote and discuss 'netiquette', e-safety and digital literacy.

5. Evaluating the impact of prevention activities: schools should review the existing anti-bullying policies regularly.

Good Practice in Reducing Cyberbullying

As well as these, there are examples of broader best practice (on the Internet) which can help with cyberbullying. These focus on prevention by providing information and support on being safe online. A diverse range of UK organisations provide information to the public about child internet safety. Some key examples of websites providing information to parents/ guardians and educators on cyberbullying and its prevention include:

- ThinkUKnow: an extensive education programme created by the Child Exploitation and Online Protection Centre (CEOP) and currently aimed at all school age groups from 11–16 years. Supported by the Department for Education (formerly the Department for Children, Schools and Families) and Becta (the Government's educational technology agency), the programme provides advice and safety information on a range of technology issues, including gaming and cyberbullying (http:// www.thinkuknow.co.uk/).

- Know IT All: a set of award winning resources developed by children's internet charity Childnet International containing advice on the safe and positive use of the internet. It has been developed with the support of the Training and Development Agency for Schools (TDA), Becta and Microsoft. Primarily in CD-ROM format, for parents, teachers, trainees and volunteers, it contains information about positive ways young people can use new technologies, what the risks are, and practical advice in avoiding or minimising risks. http://www.childnet-int.org/kia/.

- The DirectGov information network — this is the Government's online network of sites for communicating with the public. Direct.gov.uk itself features material on e-safety for young people as does DirectGov Kids (for younger children) and need2know.co.uk. Information for parents on online safety is available from http://www.parentscentre.gov.uk.

- Industry resources: a huge range of companies from across the internet chain produce their own valuable resources as well as distributing resources from organisations like Childnet. Internet Service Providers, mobile phone networks and computer retailers routinely provide information in the form of leaflets and CD-ROMs when families purchase a new product or service. Content hosts such as social networking sites frequently provide pages giving safety information and sometimes even integrate this information so that users are shown a safety message when undertaking certain actions (e.g., entering personal information or uploading a picture). These technologies may include reporting abuse, restricting access to age-appropriate content, reviewing for illegal or inappropriate content, parental control software and educational resources.

Websites that specifically target children and young people have also been set up that aim to educate them about online safety. They include:

- http://www.childnet-int.org: this website gives general safety advice for parents, young people and teachers as well as more specific advice on key

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issues in its fact sheets and targets three main areas: Access, Awareness, and Protection & Policy.

- http://www.beatbullying.org: CyberMentors is the latest project by Beatbullying designed to meet this need. CyberMentors.org.uk is a new service for the digital age: a traditional mentoring system delivered via a social networking site. Young people, aged 11-25, are trained as CyberMentors, in schools and online, so that they can offer support to their peers. The CyberMentors themselves — many of whom have been bullied in the past – are able to use their own life experiences to help others and improve their 'soft skills' while doing so.

- http://www.missdorothy.com: the Missdorothy.com website and the Learning programme are endorsed by the government, leading safety agencies and the Nelson Mandela Children's Fund (UK). It is currently being taught in many schools around the United Kingdom and more are being encouraged to use it. By teaching youngsters how to manage risk and assist their decision making in situations of potential danger the Missdorothy.com website aims to empower them for their future.

- http://www.websafecrackerz.com: WebSafe Crackerz is a 'spoof world' providing genuine safety information throughout all the linked sites. It consists of a game as it is based within a fictional story about 'gladhanders', liars, stalkers, bullies, security bouncers, detectives, fake spam and mobile phone companies and a big boss (the Baron), who runs the whole show. Sponsors and partners of this UK program include MSN, the Home Office, the Cyber Research Unit, Childnet International and ChildLine.

It is not enough, however, to implement any initiative, as understanding the effectiveness of intervention programs addressing cyberbullying is extremely important for well-informed decision making by policy-makers and for further development of appropriate interventions aimed at this behaviour (Dooley, Pyzalski, & Cross, 2009).

As with traditional bullying approaches, it is hoped that with intervention programs addressing the problem of cyberbullying an increase in students' awareness of cyber-safety issues and their intended outcome of reducing cyberbullying behaviour can be achieved. It is likely that current bullying interventions adopted by schools may play a role, but they may need to be revised in order to account for this new form of bullying. Some of these are discussed below.

◾ Interventions Against Traditional Bullying

Since the early 1990s several intervention programs have been developed that aimed to prevent and reduce traditional bullying in educational settings (Newman et al., 2000; Bonds & Stoker, 2000; Horne, Bartolomucci, & Newman-Carlson, 2003; Garrity et al., 2004; Espelage & Swearer, 2004; Swearer & Espelage, 2004). These have covered a wide range of methods including circle time, drama or role play, group work, peer support and education, restorative justice and support group methods. Peer support initiatives are particularly popular in the United

Kingdom, with an estimated 62% of all schools using this method (Houlston, Smith, & Jessel, 2009). The most widely known and extensively developed program targeting the reduction of bullying and aggressive behaviours was developed by Olweus (Olweus, 1991, 1993, 1994), and it has been tried in a number of countries including England, Finland, Germany, Holland, Sweden, and the United States (Olweus, Limber, & Mihalic, 1999).

In addition to the Olweus model, a number of other school-based programs focusing specifically on dealing with bullies have been developed. These focus on teaching about the power characteristic in bullying and the way in which bystanders endorse bullies, by being silent or not protesting. These included the Bully Busters program (Horne, et al., 2003; Newman et al., 2000); the Bully Proofing program (Bonds & Stoker, 2000; Garrity et al., 2004); Target Bullying: Ecologically Based Prevention and Intervention for Schools, (Espelage & Swearer, 2004; Swearer & Espelage, 2004); and Life Skills Training (Botvin, Mahalic, & Grotpeter, 1998).

Other strategies focused on teaching children appropriate methods to address conflict. The three most common prosocial approaches used were conflict resolution, peer mediation, and peaceable schools (Cueto, Bosworth, & Sailes, 1993).

While there has been a development of intervention methods, initial evaluations of the numerous implemented interventions were not positive (e.g., Smith et al., 2007; Smith et al., 2004). For example, Smith, et al.'s (2004) meta-analysis of results of published and unpublished evaluations of antibullying programs from Europe, North America and Australia, showed that the majority of these programs produced insignificant intervention effects. However, more recently Farrington and Ttoffi (2009) completed a systematic review and meta-analysis of the effectiveness of programs designed to reduce school bullying perpetration and victimisation. Their meta-analysis of 44 different program evaluations showed that 'school-based anti-bullying programs are effective in reducing bullying and victimisation (being bullied)' (Farrington & Ttofi, 2009, p. 6), with bullying decreasing by 20–23% and victimisation by 17–20%.

These traditional approaches to dealing with the problem of bullying offer individual and school-based approaches, but cyberbullying presents different challenges, with some calling for legal solutions to be considered.

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■ Legal Aspects

In November 1999 it became a legal requirement for all UK schools to have an anti-bullying policy (the *School Standards and Framework Act 1998*, Section 61 (4) (b)). The government produced an anti-bullying pack entitled 'Don't Suffer in Silence', which placed a strong emphasis on seeking help or telling a teacher when bullied (Department for Education and Employment, 1994, 2000). With more resources becoming available to schools, bullying, once a taboo topic, became more openly discussed. Schools were reported to tackle the problem more willingly, knowing that the Office for Standards in Education (OFSTED) inspects whether bullying is a problem in a school and whether the school has taken measures to combat it (Smith et al., 2000). OFSTED also produced a report in 2003, entitled

'Bullying: effective action in secondary schools', that contained guidance on how to combat bullying. It highlighted the importance of involving pupils in a school's approach and of working with parents, the key role of the Local Education Authority and effective approaches to staff training (OFSTED, 2003). Guidance for schools in England states that the policy must provide a definition of bullying, procedures to follow and sanctions. However, there is wide variation in what is included in each school's policy (Smith et al., 2008b).

So what are the legal obligations on the UK schools? The *School Standards and Framework Act* (1998) places a specific duty on state-maintained schools to combat bullying, including ensuring that anti-bullying procedures are in place. The Education (Independent Schools Standards) Regulations (2003) place similar obligations on independent schools. A case in 2001 brought against the Isle of Wight Council provided an objective assessment of bullying, which gave rise to the advisory pack 'Don't Suffer in Silence', produced by the DCSF. An action against Enfield London Borough Council a year later established that behaviour needed to be 'deliberately targeted and persistent' in order to constitute bullying. Finally, a case against West Sussex County Council, also in 2002, reported that the duty of care that a school duty owes pupils — to take reasonable steps to protect them from foreseeable harm — was recognised as being applicable not only inside the school gates, but also outside. It should be noted that this duty of care applies not only to the school as a whole, but also to each individual teacher. The law accepts that a teacher would have discharged this duty if they had conformed to the standards of a reasonably competent member of their profession at the relevant date.

The Education and Inspections Act (2006) contains some legal powers that relate directly to cyberbullying. Head teachers have the power to regulate the conduct of pupils when not on school premises or not under the control of a member of staff, to 'such an extent as is reasonable'. What is reasonable is defined in the act in terms of proportionality and therefore becomes a question for the courts. The act also provides a defence for school staff in confiscating items such as mobile phones from pupils. A pupil can be requested to reveal a message, or content on their phone to establish if bullying has occurred. Disciplinary measures may be taken against those who refuse to comply. Providing that school's policy specifically gives such possibility and as long as a student is reasonably suspected of being involved in a cyberbullying incident he or she may be searched for a phone if appropriate.

However, the legal aspects detailed above are more focused on regulations in an educational context. The next question is: if cyberbullying continues, can it and should it lead to a criminal conviction? Bullying and cyberbullying in the United Kingdom is not a specific criminal offence, but there are laws that can apply to cyberbullying in terms of harassing, menacing and threatening communications. Cyberbullying could be a criminal offence under a number of laws including the Protection from *Harassment Act* (1997), the *Malicious Communications Act (*1988), *Communications Act* (2003) (s127), *Public Order Act* (1986), and the *Obscene Publications Act* (1959). When cyberbullying takes the form of computer hacking then criminal penalties under the Computer Misuse Act (1990) may apply. The *Defamation Acts* (1952 and 1996) also deal with material published on the internet.

However, to date there have been no prosecutions and cyberbullying continues not to be perceived as a criminal offence. The implementation of the *Education and Inspections Act 2006* may mean that more cases are brought as the Act gives teachers a legal right to discipline pupils and strengthens their authority to take firm action on bullying. This legislation also tries to send a strong message to parents and pupils that bullying will not be tolerated, with court-imposed parenting orders to compel parents of bullies to attend parenting classes or face fines of up to £1,000.

One of the main problems with the introduction of specific laws to cover cyberbullying emerges from the notion that cyberspace is not a physical space owned by anyone. The internet is a man-made device created to allow better connectivity among people. 'No one fully monitors or censors information entered to servers interconnected around the world,' (Barker, 2002, p. 85). National and political boundaries do not exist in cyberspace and this reality has compounded the problem of how and where jurisdiction can be established. The proponents of the Internet state it could not be and should not be regulated because of its openness and international nature (Netanel, 2000). Therefore, not only legally does it become a problem to convict an individual who engages in cyberbullying across different jurisdictions; we also have to consider whether we actually truly want regulation of the Internet. There is a fine balance here between protecting children in cyberspace and maintaining the openness and freedom of such environments.

While in the United Kingdom, we have not currently gone down the civil or criminal legal route to address cyberbullying; more widely, problematic internet use has increased in both, civil and criminal legal proceedings (Recupero, 2008). Different laws exist across countries that cover a variety of serious actions, for example downloading child pornography or sexual solicitation of minors (Mitchell, Finkelhor, & Wolak, 2001), cyberstalking and committing technological crimes (Recupero, 2008). As discussed, different educational regulatory frameworks and preventative plans which cover cyberbullying have been developed. Creating a specific criminal law for cyberbullying in the United Kingdom does, therefore, not seem to be the way forward, especially as it may mean criminalising immature youth who may not be aware of the potential impact of their actions (Campbell, Buttler & Kift, 2008). Current civil acts as well as criminal acts seem to be appropriate to tackle serious forms of cyberbullying and the introduction of preventative methods (as with traditional bullying) may prove to be more fruitful.

Implications for Professionals

With additional civil legislation put in place and a range of internet-based programs focusing on prevention by providing information and support on being safe online educational psychologists, counsellors, teachers and other professionals working with young people and their parents will be better equipped to assist children and their parents staying safe online. It is important for children to take full advantage of the educational, social and entertainment benefits offered by the internet communication technologies as they offer a range of opportunities that were unavailable previously. These include opportunities for learning, communica-

tion, and for skill development as well as for creativity and play. However, it is also equally crucial to provide adults with the knowledge that will allow them protect children from the risks posed by technology in an informed way and to provide children with skills that will allow them to do so safely, as far as possible, without their being exposed to harmful or inappropriate material. It is hoped that the available resources and the different educational regulatory frameworks and preventative plans which cover cyberbullying already put in place will help guide the professionals involved with children to help them avoid becoming either a bully or a victim of the new technology.

Conclusion

Currently in the United Kingdom cyberbullying is not a specific criminal offence. However, prosecution could still occur as some specific cyberbullying acts could be covered under other existing laws. A number of support services have been set up to help teachers, parents and students face the challenges posed by new technology. The *Education and Inspections Act 2006* (*EIA 2006*, Department for Children, Schools and Families, 2007a: 3) outlines some legal powers that relate more directly to cyberbullying. Head teachers have the power 'to such an extent as is reasonable' to regulate the conduct of pupils when they are off site. The *EIA* also provides a defence for school staff in confiscating items such as mobile phones from pupils. A range of Education Acts and government initiatives highlight the duty of the school community to protect all its members and provide a safe, healthy environment. The *School Standards and Framework Act 1998* places a specific duty on state-maintained schools to combat bullying, including ensuring that anti-bullying procedures are in place. With the growth of cyberbullying research it is hoped that more specific cyberbullying interventions will be developed.

There are a number of unanswered questions regarding the law and cyberbullying. For example, in cyberspace, boundaries between countries are blurred — what consequences should therefore be used for somebody who cyber-bullies another person from a different country? Which country's law should prevail in such case? Is there a need to create a specific cyberbullying law or can existing laws be used? Do we want a cyberbullying law that may actually result in increase censorship of the internet? Our contention is that the way forward is to focus on cyberbullying prevention using the approaches suggested by Byron (2008) and the good practice outlined in the websites discussed.

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