

California "Cyber-Bully" Law Takes Effect January 1, 2011

by Michael Harrington, Esq.

Among the new laws that go into force on New Year's Day 2011 is California Senate Bill 1411. The law is codified as Penal Code section 528.5 and is aimed at 'Cyber Bullies'. The bill was introduced by California State Senator Joe Simitian from the 11th State Senate District which includes Palo Alto and the "silicone valley".

The law focuses on so called "e-personation" or impersonating another person by use of the internet. This includes email, online forums and social media. There are already laws on the books to protect victims of impersonation and identity theft but those laws focus on misappropriation of property or other tangible benefits (Penal Code 529 and 530). The new law, Penal Code 528.5, is primarily concerned with other harm such as harassment or slander. (footnote 1).

"E-personation takes no special expertise," said Simitian. "It's as quick and easy as posting comments on a Web forum under another person's name. Until now, there really has been no deterrent."

Falsely sending out twitter messages that purport to be from a celebrity or falsely creating a Facebook page under the name of another person in order to embarrass them would now fall under the purview of this new law and subject the impersonator to criminal and civil liability.

The penalties for online impersonation are similar to those already on the books for other forms of impersonation – a fine of up to \$1,000 and/or up to one year in jail. The bill would also allow victims of online impersonation to pursue compensation in civil court. The new California law takes effect on January 1, 2011.

Because this law uses the term falsely impersonating an "actual person" in order to harass another, some commentators have criticized the law for leaving a loophole open for cyber bullies who use fake names or fake profiles to harass their victim. I disagree.

Stalking laws have been expanded to include "cyber stalking" . Penal Code 646.9.

"Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his..."

This includes use of the internet or email. (foot note 2).

Also, Penal Code 653m once used for only for annoying phone calls in the old days has long ago been brought up to date to include other electronic devices such as the internet or email.

Every person who, with intent to annoy or harass,
or makes repeated contact by means of an
electronic communication device, to another person is,...
guilty of a misdemeanor. (footnote 3)

To recap. The new law focuses on perpetrators who impersonate the
victim through means such as creation of a false profile under the victim's
name with a malicious intent. Other laws on the books already protect
against online harassment or stalking.

Additional Resources

FOOTNOTE 1: Calif. Penal Code 528.5. (a) Notwithstanding any other provision of law, any
person who knowingly and without consent credibly impersonates another
actual person through or on an Internet Web site or by other
electronic means for purposes of harming, intimidating, threatening,
or defrauding another person is guilty of a public offense punishable
pursuant to subdivision (d).

FOOTNOTE 2: pc 646.9. (a) Any person who willfully, maliciously, and repeatedly
follows or willfully and maliciously harasses another person and who
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 is guilty of the crime of stalking, punishable by
imprisonment in a county jail for not more than one year, or by a
fine of not more than one thousand dollars (\$1,000), or by both that
fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a
temporary restraining order, injunction, or any other court order in
effect prohibiting the behavior described in subdivision (a) against
the same party, shall be punished by imprisonment in the state prison
for two, three, or four years.

(b) For purposes of this section, an impersonation is credible if
another person would reasonably believe, or did reasonably believe,
that the defendant was or is the person who was impersonated.

(c) For purposes of this section, "electronic means" shall include
opening an e-mail account or an account or profile on a social
networking Internet Web site in another person's name.

(d) A violation of subdivision (a) is punishable by a fine not
exceeding one thousand dollars (\$1,000), or by imprisonment in a
county jail not exceeding one year, or by both that fine and
imprisonment.

(e) In addition to any other civil remedy available, a person who
suffers damage or loss by reason of a violation of subdivision (a)
may bring a civil action against the violator for compensatory

damages and injunctive relief or other equitable relief pursuant to paragraphs (1), (2), (4), and (5) of subdivision (e) and subdivision (g) of Section 502.

(f) This section shall not preclude prosecution under any other law.

FOOTNOTE 3; PC 653m. (a) 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 addresses to the other person any 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. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

(b) Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business.

(g) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, facsimile machines, pagers, personal digital assistants, smartphones, and any other device that transfers signs, signals, writing, images, sounds, or data. "Electronic communication device" also includes, but is not limited to, videophones, TTY/TDD devices, and all other devices used to aid or assist communication to or from deaf or disabled persons. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.