



Prohibiting Online Impersonations - California and Canada

January 17, 2011 by Bob Tarantino

California recently added a new section (Section 528.5) to their Penal Code which makes it a criminal offence to knowingly and without consent credibly impersonate[] another person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person

California being California, questions were immediately raised: Is It Now Illegal To Pretend You're A Celebrity Online? Christina Santana at the JETLaw Blog provides some background details on the impetus for the law, which apparently is intended to address a rather large lacuna in California's legal code: when the leader of a Silicon Valley industry association had his email accounts hacked and illicit emails sent in his name, he was angered by the fact that California law provided no apparent recourse. The bill, intended to address cyber-bullying and cyber-harassment as well as electronic impersonation, has raised some concerns from civil liberties groups who worry that the law does not adequately allow for parody and political activism (see this BBC News story). The new Penal Code provision makes explicit reference to "opening an e-mail account or an account or profile on a social networking Internet Web site in another person's name".

As this Vancouver Sun story notes, Canadians (whether celebrities or otherwise) already can rely on the Criminal Code to protect against online impersonations (or, in the deathless prose of the Code, "personations"): Section 403 of the Canadian Criminal Code prohibits:

(Im)personat[ing] another person, living or dead,

(a) with intent to gain advantage for themselves or another person;

(b) with intent to obtain any property or an interest in any property;

(c) with intent to cause disadvantage to the person being personated or another person; or

(d) with intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

Because the language of Section 403 is agnostic (indeed, silent) with regards to technology, the section can presumably be used to prosecute online (im)personation just as readily as physical (im)personations (to date, most prosecutions under Section 403 appear to be for matters such as forged passports and driver's licenses or fraudulently using someone else's credit cards).

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