Cyber-bullying and young people: How Hong Kong keeps the new playground safe

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A B S T R A C T

The number of people using digital communication technologies and participating in networked public spheres (Twitter and Facebook) has escalated in recent years. While this digital revolution has brought immense benefits to the global society, its ability for anonymous communication, and its ability to generate, manipulate and disseminate digital information which can be accessed instantaneously and continuously has also led to an abuse of these technologies causing irreparable harm to another person's reputation and creates a record that causes serious psychological and emotional trauma. Protecting citizens from these forms of abuse is a priority of most governments. This paper provides an overview of the traditional tort remedies and a summary of the statutory schemes in Hong Kong.

1. Introduction

The rapid advancements in information communication technology have led to new generations of society born and nurtured within a digital environment. For these digital natives, the Internet, smartphones, and social networking sites are an integral part of their daily lives. At the end of June 2012, there were approximately 2,405,518,376 Internet users worldwide.[1] That is a 566.7% growth when compared to the year 2000. With 1,076,681,059 users in Asia, Asia is the biggest geographic region with the highest number of Internet users in the world. However, while Hong Kong has 5,329,372 Internet users for the same period (June 30 2012)[2], the mobile subscriber penetration rate at the end of November 2013 was 237.6% with 17,071,634 subscribers registered.[3] Indeed, the Nielson Report, Decoding the Asian Mobile Consumer reports that the Asia Pacific smartphone penetration is the highest in Hong Kong at 87% where users are also reported to own multiple mobile handsets.[4] Further there are approximately 3 million people on Facebook in Hong Kong. These are active users visiting the Facebook daily in the second quarter of 2013. Of these, more than 2.4 million (82.7%) used their mobile devices to visit the social networking site each day.[5] A total of 4.3 million visit at least once a month with more than 3.5 million visiting using their mobile phones.[6] Such heavy usage of social communicative and interactive platforms like Facebook, discussion forums and blogs accessible either via fixed PCs or via mobile handsets creates

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  [1] World internet usage and population statistics, June 2012; available at http://www.internetworldstats.com/stats.htm.
  [2] Ibid.
  [3] Key communication statistics, Telecommunication services, Office of the Communication Authority; available at http://www.ofca.gov.hk/mobile/en/media_focus/data_statistics/key_stat/index.html.
  [4] 87% smartphone penetration in Hong Kong, Singapore, 13 September 2013, Media Research Asia; available at http://www.mediaresearchasia.com/view.php?type=press&id=3184.
  [5] Lam, J., Facebook and the age of digital democracy, China Daily, 24 August 2013; available at www.chinadaily.com.cn/hkedition/2013-08/24/content_16917827.htm.
  [6] Ibid.

a potential for the misuse of the Internet where hostile behavior can have serious physical and psychological impact on its victims.

Cyber-bullying is certainly one example of the misuse of the Internet; in which personal computers and mobile handsets are the most common devices used to harass and intimidate others. Bullying is not a new phenomenon. One of the underlying concepts of traditional bullying is the notion of a power imbalance – the bully victimizes his target because he has the advantage of age, size or position and the victim feels alone and is powerless to fight. What differentiates traditional bullying and cyber-bullying is the time and place. In traditional school bullying for example, the bullying is often within a physical location of the school – the school field, in the toilet, along the school corridor and during the period when the students are in school. In cyber-bullying, no such constraints exist. As a recent Nova Scotia report on cyber-bullying notes, the viral nature of cyberspace, the ubiquity of the technology and the fact that communications are no longer constrained by time and place has unlocked the potential of the bully.[7] The cyber-age bully can thus 'follow' the victim, 24 hours a day 7 days a week into the victim's personal space for which he has no refuge. This has led to a number of tragic incidents.

The focus of the paper is three-fold. First, the paper examines the extent of cyber-bullying among adolescents in Hong Kong. Second, it proceeds to explore the scope and workability of both civil and criminal law in addressing the imbalance of power between the victims and their bullies before briefly exploring whether a specific offense dealing with cyber-bullying would be suitable. Finally it concludes with a suggestion that a restorative whole school approach might be a positive step forward.

2.   Cyber-bullying – what is it?

There is no agreed definition of what constitutes cyber-bullying. A broadly accepted baseline definition of bullying states that it is an aggressive act with three characteristics – (i) it must be intentional; (ii) it involves a power imbalance between an aggressor and a victim and (iii) it is repetitive in nature and occurs over time.[8] Therefore, making fun of another in a playful way is not considered intentional. There must also be differences (whether social or physical) between the bully and the victim that makes it difficult for the victim to retaliate and defend himself.[9] Further an occasional conflict is not bullying

given that the intentional harm must recur over a period of time.[10]

The definition for cyber-bullying adopts the baseline definition of bullying (above) and includes the elements of information and communication technologies. Thus, some examples of the definition have included "the use of information and communications technology to intimidate, harass, victimize or bully an individual or a group of individuals",[11] "is a sub-set of bullying or covert bullying using technology, unprovoked aggressive and intentional behavior involving abuse of power in relationships",[12] "wilful and repeated harm inflicted through the use of computers, cell phones and other electronic devices".[13]

The three characteristics of bullying is easily satisfied in cyber-bullying. While bullying cannot be accidental, the power imbalance is created by the bully's online anonymity. As with traditional bullying, incidents of cyber-bullying can be repeated over a period of time, with threatening emails and text messages written and repeatedly sent.

As with traditional school bullies, cyber-bullies are malicious offenders who seek implicit or explicit pleasure or profit through the mistreatment of other individuals.[14] The reasons often cited by American adolescents for engaging in bullying include "for revenge", "he/she deserves it" and "for fun".[15] There is however a major difference between traditional bullying and cyber-bullying. Cyber-bullying is more invasive and insidious. The always on nature of modern communications allows the victim to be bullied 24/7. There is no respite as it can occur at any time anywhere. It would be difficult for the victim to read his email, contact their social networks or read text messages without letting the bullies into their lives. There is a potential for bullying text messages, photos and videos to be received and viewed by many people thereby multiplying the harm caused to the victim. Common types of cyber-bullying behavior include text-based name-calling, use of coarse language, profanity and personal attacks, harassment and denigration, "outing" (publishing that someone is gay) and sending humiliating photo or video messages.[16] The behavior is normally carried out via email, personal websites, blogs, discussion and message boards, social networking sites (including those accessed via the mobile device), instant messaging (IM), text and video messages on the mobile phone.

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[7] Report of the Nova Scotia Task Force on Bullying and Cyber-bullying Respectful and Responsible Relationships: There's No App for That (Nova Scotia, 29 February 2012) at 12.

[8] Olweus, D. Bullying at school: Basic facts and effects of a school intervention program, 1994 Journal of Child Psychology and Psychiatry, 35(7), p. 1171–1190.

[9] Felix, E.D, Sharkey, J.D, Green, J.D., Furlong, M.J., and Tanigawa, D., Getting precise and pragmatic about the assessment of bullying: The development of the California bullying victimization scale, 2011, Aggressive Behaviour, 37(30), pp. 234–247; available from http://onlinelibrary.wiley.com/doi/10.1002/ab.20389/pdf.

[10] Supra n. 8.

[11] Bhat, C.S, Cyber-bullying: Overview and strategies for School Counsellors, Guidance Officers and All School Personnel, 2008, Australian Journal of Guidance and Counselling, 18(1) pp. 53–66.

[12] Australian Communications and Media Authority (ACMA), Submission to the Commonwealth Parliament's Joint Select Committee on Cyber safety Interim Report, June 2011.

[13] Hinduja, S and Patchin, J.W., Bullying beyond the schoolyard: Preventing and responding to cyber-bullying, 2009. Thousand Oaks, CA: Corwin Press.

[14] Diamanduros, T., Downs, E., and Jenkins, S.J., The role of school psychologists in the assessment, prevention and intervention of cyber-bullying, 2008, Psychology in the Schools, 45(8), pp. 693–704.

[15] Supra n. 13.

[16] See Commonwealth Parliament's Joint Select Committee on Cyber-Safety Interim Report, June 2011 at pp. 69–73.