ARTICLE

Cyberstalking: A Cause for Police Concern?

MARK GRIFFITHS *

Introduction

Stalking has been a high-profile crime in the 1990s leaving victims with a shattered sense of security and well-being. It now seems to be the case that stalkers are moving with the times and starting to harass and stalk in cyberspace. Eight million people in the UK currently have access to the Internet, and by 2005 it is estimated that half the nation will have access. As a direct result of this increased accessibility, the incidence of cyberstalking will almost certainly increase. Very recently the first prosecution case of cyberstalking or harassment by computer occurred in Los Angeles, when Gary Dellapenta a 50-year-old security guard was arrested for his online activities (Gumbel, 1999). Although such a phenomenon is by definition a global one, it was the Californian legal system which took the lead in an effort to combat it.

It all began when Dellapenta was rebuffed by his 28-year-old victim Randi Barber. As a result of this rejection, Dellapenta became obsessed with Barber and placed adverts on the Internet under the names 'playfuIkitty4U' and 'kinkygal.30' claiming she was "into rape fantasy and gang-bang fantasy" (Gumbel, 1999). As a result of these postings, she started to receive obscene phone calls and visits by men to her house making strange and lewd suggestions. In the UK, a recent high-profile case saw 22-year-old computer programmer Nigel Harris stalk his ex-girlfriend Claire Dawson by bombarding her with persistent and unwanted phone calls and e-mail messages (Millbank, 1999). This is believed to be the first such case in this country. This has also happened in the US where Oliver Jojanovic was accused of kidnapping and sexual assault and whose e-mail communications were monitored as evidence (Tran, 1998).

The Extent of the Problem

In 1998, Novell (one of the world's leading providers of network software) began a UK study into "spamming" (ie, the receiving of unwanted and unsolicited cyber junk mail). The focus of the study was to estimate the cost in business terms of time and money wasted. However, one of the unexpected findings of the research was that a large minority of women, 41 *per cent* of the regular Internet users, had been sent pornographic material or been harassed or stalked on the internet (Gumbel, 1999). Three *per cent* of these messages were highly personal and sexual, and 35 *per cent* of the messages were unsolicited pornography.

* PhD. Psychology Division, Nottingham Trent University.

thrust of an enactment is often expressed by saying that where the factual outline is satisfied the defendant is guilty of an offence. Each detail of the legal consequences of this by way of trial procedure, punishment and so forth may be spelt out by the legislator or left to the general law. Similarly in civil law the legal thrust gives the plaintiff who has succeeded in establishing that the proved or admitted facts constitute a cause of action a remedy in damages or otherwise.

The next step is to identify the relevant interpretative *factors.* The term "interpretative factor", in relation to an enactment, is used to denote a specific legal consideration which -

(a) derives from the way a general interpretative criterion applies to the text of the enactment and the facts of the instant case (and to other factual situations within the relevant factual outline), and
(b) serves as a guide to the construction of the enactment in its application to those facts.

The principle to be followed was stated by Lord Reid as follows -

> "When doubt arises, rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances, and decide as a matter of judgment what weight to attach to any particular 'rule'."[31]

No doubt when Lord Reid put the word rule in quotation marks here he meant to acknowledge that many of the interpretative criteria are not true rules. The task in a particular case is to determine (by reference to general criteria) the specific factors which, in the light of the facts of the instant case, are relevant in construing the enactment for the purposes of that case.

Where, as frequently happens, factors tend in different directions the interpreter then has to evaluate or "weigh" them. This is the next step in the process. As respects a particular construction of the enactment, an interpretative factor may be either positive (tending in favour of that construction) or negative (tending away from it). Usually a factor which is positive in relation to one of the opposing constructions will be reflected in a corresponding factor which is negative in relation to the other. A common case is whether a literal construction ("Construction L") or a strained construction ("Construction S") shall be applied to the enactment. The positive factor in favour of Construction L that it gives effect to the literal meaning is reflected in the negative factor against Construction S that it does not give effect to the literal meaning.

31. *Maunsell v. Olins* [1974] 3 WLR 835 at 837.
32. *Secretary of State for Defence v. Guardian Newspapers Ltd* [1985] AC 339 at 363 (emphasis added).

Where the interpretative factors do not all point one way, it is necessary for the interpreter to assess the respective weights of the relevant factors and determine which of the opposing constructions they favour *on balance.* This is the final step. Unless, in the light of the various factors, the court prefers a third construction, it will adopt this favoured construction. The relevant factors may be numerous, and no single one is overriding. As Lord Scarman said of the principle of no deprivation without compensation, "the principle is not an overriding rule of law: it is an aid *amongst many others,* developed by the Judges in their never ending task of interpreting statutes.. ."[32] So it is wrong for Judges to say, as they often do, that doubt as to a penal enactment must always be resolved in favour of the accused. In this, as in every other case of disputed statutory interpretation, the court's task is to identify all the relevant factors and then conduct a balancing exercise.

Summary

- A linguistic canon of construction reflects the nature or use of language generally, and does not depend on the legislative character of the enactment in question or its quality as a legal pronouncement.
- The first linguistic canon is that an Act or other legislative instrument is to be read as a whole.
- Construction as a whole requires, unless the contrary appears, that three principles should be applied: every word in the Act should be given a meaning, the same word should be given the same meaning, and different words should be given different meanings.
- Different words in a consolidation Act may be given the same meaning because derived from different Acts.
- It may happen that no sensible meaning can be given to some word or phrase. It must then be disregarded.
- The concept that an Act is to be read as a whole is also applied to a group of Acts if they are *in pari materia.*
- A number of linguistic canons are best known in their Latin form. One of these is *noscitur a sociis,* meaning "it is recognized by its associates".
- The Latin words *ejusdem generis* (of the same kind or nature), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character.
- The rank principle lays down that where a string of items of a certain level is followed by residuary words, it is presumed that the residuary words are not intended to include items of a different rank.
- The *reddendo singula singulis* principle (render each to each) concerns the use of words distributively. Where a complex sentence has more than one subject, and more

harassment are caught within the Act. This so-called "stalking act" sets out to create both criminal and civil sanctions for harassment, and in so doing, builds upon existing common law nuisance actions (Griffiths, Rogers and Sparrow, 1998). Under the Act an individual may be convicted of a criminal offence if they "pursue a course of conduct:

(a) which amounts to harassment of another, and
(b) which he knows or ought to know amounts to harassment on the other" [ss.l(l) and 2(1)].

To amount to a "course of conduct" there must be at last two instances of such behaviour or actions. Harassment too has a very liberal definition including "alarming the person causing the person distress" [ss.7(2) and (3)]. The activities that resulted in distress to Armistead would, it is submitted, clearly fall within these definitions (Griffiths, Rogers and Sparrow, 1998).

Criminal law and those who enforce it must come to terms with the implications of change with regards to computer crime. We would argue that the technical complexity associated with cybercrime combined with the limited number of prosecutions has permitted criminal justice practitioners the luxury of ignorance. As Sparrow and Griffiths (1997) have stated before, if computer-related crime is to occupy a position of increasing importance in the range of offending behaviour, then criminal justice practitioners must be willing to familiarize themselves with such activities in order to make judgments about the offender and the nature of their offending. One day cyberstalking may be viewed in the same way that other more "traditional" criminal acts are currently viewed.

References

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