

Communications & Technology: Defining Privacy Rights on Social Media and Penalizing the Offense of Cyber Bullying
Senate Bill 3

Article 1:

Do you have privacy rights on social media?

By: Mark Sableman July 12, 2016

True or False: Your privacy rights are diminished in social media. Most people would probably say this is true, and there are certainly court decisions asserting that people give up privacy interests once they post otherwise private matters about themselves on social media.

Consider an individual's postings on Facebook. A Facebook user may view his or her personal Facebook page as his or her domain, a little like his or her home. But a Facebook page is just one link in a colossal voluntary worldwide computer network. Except with the most stringent privacy settings, postings you make on Facebook can readily become known to many others.

Many courts have concluded, essentially, that once you post something viewable by anyone else on Facebook, you have forfeited any privacy interest in it. In one early social media privacy case, involving MySpace, a court noted, "Cynthia's affirmative act made her article available to any person with a computer and thus opened it to the public eye. Under these circumstances, no reasonable person would have had an expectation of privacy regarding the published material."

While the term "friend" seems friendly, your Facebook friends may not be your real friends. As one court noted, "Where Facebook privacy settings allow viewership of postings by "friends," the Government may access them through a cooperating witness who is a 'friend' without violating the Fourth Amendment." The court in that case reasoned that when an individual shares a photograph with his friends on Facebook, that individual "has no justifiable expectation that his 'friends' would keep his profile private," and any "legitimate expectation of privacy ended when he disseminated posts to his 'friends' because those 'friends' were free to use the information however they wanted."

And contrary to the prevailing belief in social media exceptionalism, social media activity isn't really treated differently under the law. A basic principle of privacy law for years has been that your privacy rights depend upon whether you have a "reasonable expectation of privacy." The reasonableness of your expectations has always been judged from a common-sense totality-of-the circumstances approach, regardless of the physical or virtual area of activity.

You may have a reasonable expectation of privacy with respect to a diary you keep at your bedside, but not to papers you leave visible in your workplace. Your activities in an isolated, fenced, and tree-shielded home create a stronger expectation of privacy than your activities in a high-rise apartment with the curtains open.

Social media privacy cases simply apply that long-standing "reasonable expectation of privacy" principle to Internet situations. Looking at the way Facebook and other social media sites work, most courts have concluded that once something is voluntarily posted on Facebook, it no longer carries a reasonable expectation of privacy. You give up your privacy by posting something on accessible Facebook pages.

Your privacy can be violated on Facebook, however, if others make postings invasive of your privacy. Your consent doesn't extend to the postings of others that you don't authorize.

State v. Bruhl

In a recent Connecticut case, for example, *State v Buhl*, a teenager found portions of her private diary, and her picture, posted in a manner accessible to a number of her friends and schoolmates. An acquaintance of the teen's father was prosecuted for the postings, for breach of peace and harassment — essentially, two criminal charges based on acts that violated the teen's privacy.

The case revealed a generational Facebook understanding gap, when some of the judges questioned whether Facebook posts counted as being "public," and suggested that experts were needed to explain the mysterious workings of Facebook. But the state Supreme Court found that "elementary Facebook concepts," were clear from the trial court record and didn't require expert testimony.

As to the heart of the crime, the court viewed the defendant's postings of the teen's private diary notations as so vexing and personal that the posting satisfied the elements of the crime of breach of peace, including exhibition of offensive, indecent or abusive matter that is likely to annoy or alarm the target. Using language common in privacy cases, the court noted the "deeply personal" and "embarrassing" nature of the posted materials, and therefore found the postings inherently vexing and abusive. The court also found the defendant's conduct to support a conviction for harassment.

Ultimately, privacy law protects people in social media the same way it protects them elsewhere. Your voluntary posting of personal and intimate information waives any reasonable expectation of privacy, at least as to that information. But your privacy is still protected, and fully enforceable, in social media, when another person improperly and without your permission posts private information about you.

<https://www.thompsoncoburn.com/insights/blogs/internet-law-twists-turns/post/2016-07-12/do-you-have-privacy-rights-on-social-media-#:~:text=But%20your%20privacy%20is%20still,Thompson%20Coburn's%20Intellectual%20Property%20group.>

Article 2:

Cyber-bullying via social media seen as crime

By: DJ Yap May 15, 2015

PICKING on someone on Facebook may soon become a crime.

A bill has been filed at the House of Representatives defining and penalizing "cyber-bullying," or the act of posting rude, offensive or insulting messages against the victim on the Internet.

"By penalizing acts of cyber-bullying, people are encouraged to become responsible netizens and make them accountable for their cyber-actions," the author, Camarines Sur Rep. Rolando Andaya Jr., said in an explanatory note.

Cyber-bullying, he said, would refer to "acts of cruelty committed using the Internet or any form of

electronic media or technology that has the effect of stripping one's dignity or causing reasonable fear or physical or emotional harm."

Offensive acts include the following:

- a) Repeatedly sending offensive, rude and insulting message;
- b) Distributing derogatory information about the victim;
- c) Posting or sending offensive photos of the victim, whether these are digitally altered or not, or were taken with or without consent, with the intention to humiliate and embarrass the victim;
- d) Breaking into an email, social networking or any electronic account and using the victim's virtual identity to send, upload or distribute embarrassing materials to or about others;
- e) Sharing the victim's personal information or any embarrassing information, or tricking the victim into revealing personal or embarrassing information and sharing it to others; and
- f) Repeatedly sending messages that include threats of harm or engaging in online activities that cause fear on the victim's safety.

"Cyber-bullying is one such problem that the advancement in technology and social media has generated. It can potentially affect not only school-aged children, but also any individual who has access to a mobile phone or the internet," Andaya said.

Under House Bill 5718, or the proposed "Anti Cyber-Bullying Act of 2015," cyber-bullies shall face a penalty of fines ranging from P50,000 to P100,000, or imprisonment between six months and six years, or both, at the discretion of the court.

"The onset of the Internet has shattered world barriers empowering users with immense information and allowed them to be socially connected to virtually anybody around the globe in the comfort of their own homes," Andaya said.

"Because of the anonymity that the Internet gives, social and moral norms are easily switched off and users are emboldened to just say or post anything online without accountability," he added.

As a result, "Internet bashing" has become a culture among Internet users and even spawned problems that involve hostility and aggression, Andaya said.

The measure provides that the Commission on Information and Communications Technology (CICT), Department of Justice (DOJ), and the Department of Interior and Local Government (DILG) shall jointly formulate the necessary rules and regulations within 90 days of passage.

HB 5718 has been referred to the information communication technology committee chaired by Rizal Rep. Joel Roy Duavit.

<https://technology.inquirer.net/42356/cyber-bullying-via-social-media-seen-as-crime>